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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 75

UNITED STATES

Petitioner,

v.

ALGERNON BLAIR, INDIVIDUALLY, AND TO THE USE OF ROANOKE MARBLE & GRANITE COMPANY, INC.

On Writ of Certiorari to the Court of Claims

BRIEF FOR RESPONDENT

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INDEX

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OPINION BELOW

The opinion of the Court of Claims (R1, 76-92) is officially reported at 99 C. Cls. 71.

JURISDICTION

The judgment of the Court of Claims was entered on Oc-

tober 5, 1942 (RI, 92)[1]. A motion for a new trial was overruled on March 1, 1943 (RI, 93). The petition for a writ of certiorari was filed May 29, 1943, and granted October 11, 1943. The jurisdiction of this Court rests upon Section 3(b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

STATEMENT OF FACTS

Respondent, a building contractor, recovered judgment in the Court of Claims for $130,911.08 damages resulting from sundry breaches by petitioner of a contract covering the erection of a group of buildings for the Veterans Administration at Roanoke, Virginia.

The statement of facts set out in the brief filed herein on behalf of the government is in so many respects inaccurate and omits so many of the material facts and falls so short of being a fair statement of the facts that it is necessary to restate the facts instead of attempting to point out the inaccuracies and omissions.

The material facts, as found by the Court of Claims (RI, 31-74), may be briefly summarized as follows:

Algernon Blair, plaintiff below, respondent here (hereinafter called Blair), is an Alabama contractor of thirty-five years experience in constructing federal buildings throughout the country, including many hospital facilities, some of which considerably exceeded the cost of the facilities involved here. In all those years he has never failed to fully complete a project within the time estimated by him (RI, 38).

The Invitation for Bids

The Veterans Administration invited bids in November

(1) The transcript is in two volumes. The designation "RI" refers to the first volume, and "RII" to Volume 2.

1933 for the construction of fourteen buildings and connecting corridors, roads and parking area at Roanoke, Virginia. The invitations called for separate bids, among other items, for (1) "General Construction" and (2) "Plumbing, Heating and Electrical Work" (RI, 31).

The invitation for bids provided (RI, 36) as follows:

> "Bids will be considered only from responsible individuals, firms, or corporations. In determining the lowest responsible bidder, consideration will be given as to whether the bidder involved maintains a permanent place of business; has adequate plant equipment to do the work properly and expeditiously; has a suitable financial status to meet obligations incident to the work and has appropriate technical experience."

The time for performance specified in the invitation for bids for the general construction was as follows (RI, 31-32):

> "Performance will begin within ten (10) calendar days after date of receipt of notice to proceed and will be completed within four hundred and twenty (420) calendar days after date of receipt of notice to proceed, except that Administration and Storehouse buildings will be completed 30 and 60 days, respectively, prior thereto and Radial Brick Chimney and sufficient work in Boiler House Building to permit installation of boilers and equipment will be completed 90 days prior thereto."

The time for completion of the heating, plumbing and electrical work was tied to the completion date of the general contractor as follows (RI, 32):

"The above bid is made with the understanding that all work covered thereby will be completed at a date not later than that provided in the contract for 'General Construction', with the exception that plumbing, heating, and electrical work in connection with Boiler House Building will be required to be completed 30 days in advance of other work and such work in connection with the Administration and Storehouse Buildings shall be completed 30 and 60 days, respectively, prior thereto."

The Awards and Contracts

Blair was awarded the contract for general construction at a price of $1,228,423.68 (RI, 33). C. J. Redmon of Louisville, Ky., doing business as Redmon Heating Company (hereinafter called Redmon), was awarded the contract for heating, plumbing and electrical work (hereinafter called mechanical work) at a price of $300,000.00 (RI, 35).

Both Blair's contract and Redmon's contract contained the following provision, in accordance with the invitation for bids (RI, 35):

"The Government may award other contracts for additional work, and the contractor shall fully cooperate with such other contractors and carefully fit his own work to that provided under other contracts as may be directed by the contracting officer. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor."

Blair's contract was awarded on December 2, 1933, Redmon's on December 6, 1933 (RI 32, 35).

Performance by Blair

Notice to proceed with the work was sent to Blair on December 19, 1933, and on that same date Blair's engineer arrived at Roanoke and was followed two days later by others who began clearing and surveying (RI, 34). Blair's equipment began to arrive on the job January 15, 1934, and excavation began the following day and was thereafter at all times diligently carried on with adequate and sufficient equipment and employees for speedily and adequately completing the work by November 1, 1934, the completion date estimated by Blair (RI, 34-35). The maximum time limit for completion of the general construction was February 14, 1935 (RI, 34), and Redmon's contract provided for completion of his work at a date not later than that provided for Blair's work (RI, 35).

It was the desire of the Government and the intention of the parties that the work be completed as soon as possible, and Blair was so notified (RI, 37, 38). Blair had made his bid and computed his cost of the entire construction work on his part for completion long prior to the 420 days allowed, and he notified the government soon after work was commenced that he had planned his work so as to complete by November 1, 1934, three and a half months ahead of the compulsory date of completion. Redmon was also notified. (See Appendix, *infra*, p. 4.) Blair at all times had on hand the men and materials to complete by that date (RI, 34-5, 44).

Redmon's Performance

Redmon received notice to proceed on or about December 21, 1933 (RI, 35). Blair was asking Redmon for dimension data as early as January 22, 1934 (Appendix, *infra*, p. 2.)

On January 25, 1934 (Appendix, *infra*, p. 3), the govern-

ment's Supervising Superintendent of Construction at the building site (Feltham) was asking the Director of Construction (Col. Tripp) to direct Redmon to have a representative report, among other things, to locate sleeves, which was necessary before the concrete could be poured by Blair. On January 29, 1934, Feltham was again stating that no representative of Redmon had reported. On February 6, 1934 (Appendix, *infra*, p. 7), Redmon was notified that certain excavation had been completed by the general contractor and that he had been ready to pour concrete since January 25th, and again Redmon was directed to have a representative report. This disregard of his obligations by Redmon continued from the beginning of the job in January until his contract was terminated on June 26th (See correspondence, Appendix, *infra*, pp. 1-42).

Neither Redmon nor any representative of his appeared at the site of the work until March 19, 1934, and then only after he had been threatened with termination of his contract (R1, 36, 40). At no time did Redmon have adequate equipment or men on the job to properly carry on the work required of him. He was not financially able to perform at any time between the date of his contract and the date of termination. Reasonable inquiry by the government when Blair first began to protest in January 1934 would have disclosed these facts (R1, 36). The failure of the contracting officer to take any action other than to request Redmon to begin and carry on his work was due to false statements and reports, of which Blair had no knowledge, by the defendant's authorized officers and agents in charge of the work at the site thereof (R1, 36). In fact, although the invitation for bids represented that "Bids will be considered *only* from *responsible* individuals, firms or corporations" and that "in determining the lowest *responsible* bidder, consideration will be given as to whether the bidder involved maintains a permanent place of business; has adequate

plant equipment to do the work properly and expeditiously; has a suitable financial status to meet obligations incident to the work; and has appropriate technical experience," (Emphasis added), the Court of Claims found that "No inquiry or investigation was made by defendant as to Redmon's plant equipment or financial status before he was given the contract for plumbing, heating and electrical work necessary to be furnished and installed *in connection and cooperation with plaintiff's work.*" (RI, 36; emphasis added.)

Delay

The facts as to Redmon's performance compared with the limited progress Blair was able to make, both in comparison with the government's normal, are tabulated in the findings of fact (RI, 43). That table shows that during the first three months Redmon's progress was .1 per cent as against the government's normal of 9.0 per cent. It shows that Blair, who had planned to complete three and one-half months *ahead* of the contract completion date, not only was not ahead of schedule, but had made only a little more than half of the progress expected of him by the government. By June 26th, Redmon had completed only about 6 per cent of the work he had been expected to complete, and Blair, thus impeded, was considerably behind in his own work, but had nevertheless completed over 27 per cent thereof.

The court below found as a fact that what work Redmon did accomplish "was of no assistance to plaintiff because the mechanical work which Redmon did perform was so far behind plaintiff's work" and was not of any "value to plaintiff's proper progress." It also found that, "Except for the delay in mechanical work and other delays caused by the defendant, plaintiff's progress would have been far ahead of 'normal' . . . " and that "plaintiff was never able

to overcome the serious delays which had occurred" (RI, 43-4). It was this delay and other delays and interferences which were found by the Court of Claims to have caused Blair to lose 3½ months with resulting damage of $51,249.52. The other delays caused by the defendant were both general and specific. The Court of Claims found (RI, 70-71) that the Government's supervising superintendent, one P. M. Feltham[2], and one of his assistants, Thomas G. Dodd[3], early in Blair's work made several highly improper rulings, which Blair successfully appealed to the contracting officer, who overruled Feltham and Dodd, and that:

> "Defendant's officers at the site of the work showed evidence of resentment at being overruled in their actions and from that time until the work was completed and in various ways entered upon a course of unreasonable, unauthorized and improper and unfair conduct and attitude toward plaintiff, his work and his officers and employees. This was due in part to a feeling of unfriendliness on the part of defendant's agents toward the contracting officer's office, and in part in a desire and for the purpose of punishing the contractor for objecting and protesting their rulings, directions and instructions, and also for the purpose of making it appear that plaintiff's force and plant were incompetent, inefficient and inadequate, and that plaintiff was responsible for seriously delaying the progress of the work rather than, as was the fact, that the work was being unreasonably delayed by failure of the government to have the necessary mechanical work properly performed. They made incorrect, misleading and untrue reports to the contracting officer's office and in many instances con-

(2) RII, 348.
(3) RII, 439.

cerning the performance of the work and in their instructions, directions and requirements the defendant's officers at the site of the work failed to exercise an honest judgment."

The court below further found (RI, 48-9):

"Immediately after plaintiff began work under the contract defendant's officers in charge of the work at the site thereof began, without any justification, to act in an unreasonable, arbitrary, unauthorized and unfair way toward plaintiff, and continued so to act throughout the performance of the contract. They constantly and without plaintiff's knowledge made false, misleading and unfair reports to their superiors concerning plaintiff and his work. On numerous occasions they required plaintiff to do things admittedly not required of him under the contract on threat of reprisals for refusal. On occasions defendant's agents would capriciously and without reason reverse their instructions and directions after plaintiff had proceeded to comply with the first instructions. In the course of their work defendant's agents in immediate charge of the work unreasonably and unnecessarily engaged in harsh, profane and abusive language to plaintiff's officers and employees thereby unreasonably interfering with and disorganizing the work. Defendant's officers at the site of the work resented being reversed by the contracting officer's office in their instructions and orders and refused when requested to give plaintiff written orders; they resented plaintiff's making protest to the contracting officer, thereby rendering it impossible for plaintiff effectively to protest in writing in each instance to the contracting officer through the defendant's officer at the site of the work."

In addition to the general delay caused by Redmon and by the general conduct and attitude of these agents, the Court of Claims found specific facts of delay and interference. Illustrative are the following examples:

1. Instead of having an inspector constantly available to inspect Blair's work as it progressed, and although requiring that each step in the work be inspected before the next step was taken by plaintiff, Feltham and Dodd required that Blair give them at least two hours' written notice before they would make inspections. This had the effect of unnecessarily delaying the progress of the work and rendered it more expensive than it would otherwise have been. These government officers at the site of the work realized and knew that Blair was being seriously delayed by failure of the government to have the necessary mechanical work performed so that Blair could proceed without unreasonable interruption, and partly for that reason they entered upon a course of conduct intended to make it appear that Blair was not ready for the mechanical work installations and was himself delaying the work. Notwithstanding this, Blair had the roof on some of the buildings before Redmon's work got under way (RI, 50).

2. Although bolting of the metal pans used for concrete forms was "not required by the contract, was unnecessary and contrary to the usual and customary practice in the construction industry", and the pans "were in good condition", "were not out of shape, bent or warped", "did not at any time allow any unusual leakage of cement" and the weight of the first concrete poured "seals the overlaps", nevertheless, Feltham and Dodd required that the pans be bolted *until* "*after* the mechanical contract had been cancelled and relet and after the mechanical work got under way by the said mechanical contractor", "although the same pans were thereafter used and were, if anything, not

in as good condition as before". This requirement, with the attendant delay necessary to bolt the pans, was found to be "unreasonable, arbitrary and so grossly erroneous as to imply bad faith" (RI, 50).

3. Although Blair could not do the fine or finished grading in the basement of certain buildings preparatory to laying the concrete basement floor slabs until the mechanical contractor had dug his trenches, laid his pipes, backfilled and tamped the soil over the pipes, and although it was the reasonable and customary practice for the general contractor to wait until this work had been done, Feltham required Blair to do the fine grading *before* Redmon had dug, laid pipes, filled and tamped. Then, later, after the pipes had been laid, Blair had to do the grading a second time which, of course, required unnecessary time (RI, 51).

4. Although Blair started out to lay bricks by the "overhand" method, under which the bricks are laid from the inside of the wall and by using the floor of the building for the workmen to stand on, which was found by the Court of Claims to be a "recognized and accepted way of laying such brick", he was required by Feltham to build scaffolds and do this work from the other side, the outside of the wall, thus costing him the additional time necessary to obtain material for and erect scaffolds and to remove them afterwards (RI, 45-48).

5. Feltham and Dodd "were unreasonably meticulous and over-exacting and positively showed a lack of reasonable and proper cooperation as a whole throughout the performance of the contract" (RI, 48). This necessarily delayed Blair in his work.

These, among the other unfair and unreasonable acts and requirements of the government's agents and other gener-

al lack of cooperation, delayed Blair so that, instead of completing by November 1, 1934, as planned and as he would have done but for the delay in the mechanical work and the other delays, he was delayed three and one-half months beyond that date, "as a result of which he incurred and paid the following increased costs" (RI, 40-44):

Salaries of supervisory and clerical forces and expenses at Roanoke for 31-2 months	$11,344.40
Overhead expenses at Montgomery office for 31-2 months	18,093.52
Liability and compensation insurance	4,661.07
Heating cost	4,124.73
Field expenses, resulting from delay in furnishing Boiler House information	290.89
Cost of grading, roads and walks	12,734.91
Total	$51,249.52

This is Item One of the six items of damage allowed by the Court of Cliams.

Requirement of Outside Scaffolds

(Finding 15, Item 2 of Judgment)

As already indicated, the Court of Claims found that Blair was required to abandon the "customary and acceptable" method of overhand brick work and to build outside scaffolds which were not required by the contract or specifications, and that Feltham and Dodd rejected all work done by that method (RI, 45-7). This was accomplished by indirection and threats of reprisal by Feltham, who refused to issue a written order from which an appeal could have been prosecuted effectively, and who admitted that he

had no right to require the outside scaffolds, but told Blair's men (emphasis supplied) "*he could and would make plaintiff sorry* if he did not do so or *make* him wish he had" (RI, 47).

For this additional and unnecessary work, not required by the contract or specifications, the court below found that Blair had incurred additional costs of $25,886.84 and included that amount in its judgment (RI, 48).

Unreasonable Acts and Requirements

(Finding 16, Item 3 of Judgment)

The Court of Claims found that Blair had been damaged in the amount of $9,033.21 for increased costs due to "arbitrary and unauthorized rulings" by Feltham and Dodd, made up of the following items (RI, 48-51):

> "(a) $4,952.95 actual salaries and expenses of two extra representatives which under the circumstances it was necessary for plaintiff to station at Roanoke solely to handle protests, etc., with the defendant's officers in charge of the work and directly with the contracting officer in Washington; (b) $2,620.66 actual cost of unnecessarily bolting metal concrete form pans with three bolts at the overlap; (c) $1,352.10 actual cost of performing certain fine grading work in the basements of certain buildings a second time; and (d) $107.50 actual extra cost of temperature steel improperly required by supervising superintendent of construction where two-way reinforcing steel was used."

The court below found that these items of expense and damage were incurred because of the conduct of the govern-

ment's agents in immediate charge of the work and that their conduct was such as to imply bad faith, except as to the item (d) for temperature steel, which was an extra and so recognized by the contracting officer, but Blair was never paid for it. As to all of these items, the court found (RI, 49) that Feltham and Dodd required Blair to do numerous things *admittedly* not required by the contract, refusing for this reason to put their orders in writing, and forced compliance through threats of reprisals for refusal to obey, thereby rendering it impossible for plaintiff effectively to protest in writing. Blair protested to the contracting officer orally. The contracting officer entertained these protests, but took no action from which Blair could appeal to the head of the Department.

Excessive Wage Rates

Rodmen

(Finding 17, Item 4 of Judgment)

The contract was financed and paid for from Public Works Administration funds, and that organization prescribed the form of contract. Article 18 of that form contained the following pertinent provisions (RI, 52):

> "ART. 18 Wages.——(a) . . . The contractor and all subcontractors shall pay not less than the minimum hourly wage rates for skilled and unskilled labor as follows:
>
> "Skilled labor, $1.10.
> "Unskilled labor, $0.45.
>
> "(b) A clearly legible statement of all wage rates to be paid the several classes of labor employed on

the work shall be posted in a prominent and easily accessible place at the site of the work . . . :

• • •

"(d) The above designated minimum rates are not to be used in discriminating against assistants, helpers, apprentices, and serving laborers who work and serve skilled journeymen mechanics and who are not to be termed as 'unskilled laborers' ".

While preparing his bid, Blair wrote the Public Works Administration (RI, 53-54) inquiring whether, under this form of contract, he would be permitted to recognize the well-known class of "intermediate" or semi-skilled worker, and was advised that this would be permitted. He therefore estimated his costs on that basis in preparing his bid.

The Public Works Administration soon found that it was difficult to fix the amount of wages for these intermediate grades throughout the country, which had thus been left open under the standard form of contract. In October 1933, the Deputy Administrator of that Administration wrote a letter (RI, 54-55) to all its State Engineers and State Advisory Boards, suggesting that this problem be solved by state-wide agreements between contractors and organized labor, who were directed to give as much weight as possible to local customs and usages. Such an agreement was reached as to a number of classes of labor in the State of Virginia in 1933, and when Blair was awarded this contract, he was supplied with a copy of the agreed schedule (RI, 55). While it listed "carpenters on rough work" as belonging in the intermediate class, it made no specific provision for the reinforcing steel workers (RI, 55-6) known as "rodmen", who place and tie the reinforcing steel rods in concrete forms. The only tools used by such men are wire pliers and sometimes steel cutters. They work under the direct supervision and instructions of experienced and capable foremen (RI, 56).

Prior to, during and after the performance of Blair's contract, industry and labor, as well as the Government under other PWA contracts, recognized, treated and classified this work as semi-skilled work (RI, 56). Blair so treated it in computing his bid price on the work here involved and, before commencing work, posted at the job site and submitted to Feltham his schedule of classifications of work and hourly wage scales, listing reinforcing steel work as semi-skilled at 60 cents per hour. Feltham, as the authorized representative of the contracting officer, approved this classification, and Blair operated thereunder without objection until March, 1934 (RI, 56), when Feltham suddenly changed his mind and ordered Blair to pay these workers $1.10 per hour, on the sole ground that the contract recognized and provided only for "skilled" and "unskilled" labor (RI, 57), and that labor which did not clearly fall into the unskilled or common labor classification must be classified and paid as skilled labor (RI, 58).

To bolster this patently erroneous ruling, Feltham wrote a grossly misleading letter to the Department of Labor, in which he stated that there were "only two scales, skilled and unskilled labor", and inquired concerning which of these two classifications covered the steel rodmen. He treated his own interpretation of the contract as binding, and did not submit that interpretation to review. Hence, the reply he received from one C. D. Hollenbeck of the Labor Department, quoting a "determination" of the Public Works Administration (which had no authority to decide disputes under the contract) that the rodmen "should be considered skilled workmen", did not relate to the true controversy (RI, 58-9).

Feltham therefore ordered Blair to pay the rodmen at $1.10 per hour, and to pay them for work already done the difference between the semi-skilled rate and the skilled rate, and charged Blair with a violation of the con-

tract in this respect (RI, 61). Blair protested to the contracting officer, who gave him a hearing, but refused to give the question his independent consideration, solely on the basis of the Hollenbeck letter (RI, 59). The Court of Claims, on the basis of these facts and the testimony discussed at pp. 29-30, *infra*, found that action of Feltham and the Contracting Officer on this question was "unauthorized, arbitrary and so grossly erroneous as to imply bad faith" (RI, 59, 61).

During the progress of the work, Feltham and Dodd arbitrarily, capriciously, unreasonably and grossly errorneously interfered with and delayed the reinforcing steel workmen, and caused an unreasonable amount of idle time of steel crews on the job. Actual excess cost and damage to Blair on this account was $4,291.93 (RI, 62).

Carpenters

(Finding 18, Item 5 of Judgment)

Among other classifications of work universally recognized in the construction industry is that of "semi-skilled carpenters", sometimes called "rough carpenters" or "carpenters assistants", who are entitled to a lower minimum wage per hour than skilled carpenters. They are permitted to make plain wooden forms for mass concrete, scaffolds, and certain rough work on temporary frame buildings. Based on his correspondence with the Public Works Administration, Blair's cost estimate, on which his bid was made, was computed on the basis of this custom and on the expectation of paying such workmen 60 to 65 cents per hour, which were the prevailing rates in Roanoke and vicinity. He accordingly prepared and posted his wage scale, which Feltham at first approved. At the time that Feltham reversed his approval as to the rodmen, *supra*, he told Blair that he must pay all such semi-skilled carpenters the full

skilled rate of $1.10 per hour on the stated ground that "the contract contemplated and authorized only two rates, one at 45 cents for common labor and the other at $1.10 for skilled labor, and that any man who used a tool was a skilled mechanic and must be paid $1.10 per hour". This construction had no other basis than the Hollenbeck letter above mentioned. Blair protested to the contracting officer, this requirement being a part of the same controversy concerning rodmen. The contracting officer made no independent decision or ruling on the matter at the time. As a result of this ruling, Blair was forced to pay all semi-skilled carpenters, throughout the work, at $1.10 per hour, which increased his costs by $26,354.19 over and above what he would have paid at the prevailing semi-skilled rates. The Court of Claims found this requirement to be "unauthorized, arbitrary and so grossly erroneous as to imply bad faith" (RI, 64).

This construction of the contract was ultimately reversed by the contracting officer (see *infra* p. 20) shortly before the work was completed, when he decided and ruled in writing that the contract did contemplate and provide for intermediate classifications of labor at a minimum wage rate between that fixed for skilled and unskilled labor (RI, 69-70, 87, 90. This was the only ruling ever made by the contracting officer on this question, but Blair was not reimbursed for the excess wages he had been ordered to pay.

Excess Labor Costs Expended by Subcontractor Roanoke Marble & Granite Company, Inc.

(Finding 19, Item Six of Judgment)

The claim for $9,730.27 to the use of the subcontractor, is for actual excess labor and overhead costs by reason of the Government's refusal to permit the subcontractor to em-

ploy and use semi-skilled laborers as helpers, improvers and terrazzo grinding machine operators at an intermediate minimum wage rate of 60c per hour. In making its bid the subcontractor prepared its estimate of labor costs under the Government's specifications and instructions relating to the employment of labor on the basis of payment of minimum wage rates for skilled mechanics and common laborers, in the belief that they might employ intermediate labor at the prevailing wage rate as experienced helpers, improvers or assistants to mechanics, as was the recognized practice and custom in the trade of installing tile, terrazzo, marble and soapstone work. The subcontractor began its work by using skilled, semi-skilled and common labor in accordance with that practice. Shortly thereafter Feltham, solely on the basis of the submission and ruling relating to reenforcing steel workmen and carpenter's helpers and assistants, told and directed the subcontractors and Blair that only two classes of labor would be permitted to be employed on the work, namely, skilled mechanics at $1.10 per hour and common labor at 45c per hour, that there was no intermediate wage scale for that or any class of work being performed by the subcontractor, and that any such helpers or apprentices who used tools could not be employed unless they were paid the mechanic's wage of $1.10 per hour. Both the subcontractor and Blair protested to the Government's supervising superintendent and to the contracting officer, but complied with the instructions and continued the work to completion under those directions with the result that the subcontractor's costs of labor were $9,730.27 in excess of what the reasonable cost thereof would have been had the Government permitted the use of semi-skilled labor as the subcontractor had planned and upon which he had based his estimated costs. (RI, 64-70, 90)

The subcontractor and Blair made a written protest to

the contracting officer against compliance with Feltham's order to pay skilled mechanic's wages of $1.10 per hour to laborers employed in the operation of terrazzo grinding machines and submitted evidence of the fact that it was the custom and usage of terrazzo contractors to use semi-skilled labor on such grinding machines at the prevailing intermediate wage rates. The protest was considered by the contracting officer. After considerable exchange of correspondence and delay, the contracting officer finally decided on January 14, 1935, that Blair and the subcontractor were authorized under the contract to use semi-skilled labor at an intermediate wage rate in the operation of these machines. When the contracting officer finally reached that decision the terrazzo grinding work on the project had been completed. (RI, 66-70)

ARGUMENT

Principles of Law Applicable

The general principles of law applicable to this case are well settled:

1. In considering a claim against the federal government for breach of contract, the contract is to be construed and the rights of the parties are to be determined by the application of the same principles as if the contract were between individuals[4].

2. The rule of law and of ordinary fairness in contract dealings is that each party impliedly agrees not to prevent

(4) *United States v. Smoot*, 15 Wall. 47; *United States v. Smith*, 94 U. S. 214; *Hollerbach v. United States*, 233 U. S. 165, 171-2; *Reading Steel Casting Company v. United States*, 268 U. S. 186.

or interfere with performance by the other party[5], which means that "in every contract there exists an implied covenant of good faith and fair dealing"[6]. "A party to a contract is under an implied obligation to cooperate in its performance, and cannot take advantage of an obstacle to performance which it has created or which lies within its power to remove"[7].

3. A contract couched in the language of the government's own officers is construed most strongly against it, as in the case of an individual whose contract is framed in his own language[8].

4. Findings of fact by the Court of Claims are conclusive on review by the Supreme Court[9], except to the extent that it appears, on appropriate assignments of error, that there is a lack of substantial evidence to sustain them (28 U. S. C. sec. 288, as amended May 22, 1939, c. 140, 53 Stat. 752).

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(5) *Clark v. United States*, 6 Wall. 543; *United States v. Smith*, 94 U. S. 214; *Mueller v. United States*, 113 U. S. 153; *United States v. Barlow*, 184 U. S. 123; *Hart v. American Concrete Steel Co.*, (E.D. N.Y.) 278 F. 541, 544, aff'd: 285 F. 322; *Griffin Mfg. Co. v. Boom Boiler & Welding Co.*, (C.C.A. 6) 90 F. (2d) 209.

(6) *Kirke LaShelle Co. v. Paul Armstrong Co.*, 263 N. Y. 79, 188 N. E. 163, 167; *Uproar Co. v. National Broadcasting Co.*, (C. C. A. 1) 81 F. (2d) 373, 377; cf. *Ripley v. United States*, 223 U. S. 695, 701-2.

(7) *Murphy v. North America Co.* (S.D. N.Y.), 24 F. Supp. 471, 478.

(8) *Garrison v. United States*, 7 Wall. 688, 690; *Scully v. United States*, (D.C. Nev.) 197 F. 327, 343; *United States v. Bentley*, (S.D. Ohio) 293 F. 229, 235; *Davis v. Commissioner*, (W.D. Ky.) 13 F. Supp. 672, 680.

(9) *Luckenbach S. S. Co. v. United States*, 272 U. S. 533, 537-8.

Sumary of Argument

1. The findings of the Court of Claims that the Government's representatives were guilty of numerous acts, in breach of its contractual obligations, which were arbitrary, capricious, unreasonable and so grossly erroneous as to imply bad faith are supported by the overwhelming preponderance of the evidence.

2. The Government was properly held liable for damages and losses sustained by Blair as a result of delays and interference with the performance of his contract on the part of the Government's employees and of Redmon. No provision of the contract relieved the Government, either expressly or impliedly, of this liability. It was proper to include, in the computation of such damages, that part of Blair's overhead expense which the court found was attributable to and resulted solely from such delays and interference.

3. Feltham's requirement that Blair build outside scaffolds, enforced in bad faith through acts of coercion and punishment from which Blair could not protect himself, constituted a breach of contract, and Blair is entitled to recover the unneccessary and improper expense resulting.

4. Where the contracting officer's authorized representatives in bad faith required of Blair the doing of expensive work, admittedly not required of him by the contract, and enforced their admittedly illegal requirements by threats and frustration of the right of appeal to their superiors, Blair is entitled to recover the expense resulting therefrom.

5. Nothing in the contract should be construed as reposing in one of the parties the unlimited right of construing the contract and determining whether or not there had been a breach. The improper interpretation placed upon the labor-rate provisions of the contract in bad faith by Feltham would not be binding upon Blair even if they had been approved by Feltham's superiors. Since the contracting officer eventually reversed Feltham's construction, Blair is entitled to recover the excess wages paid pursuant to the erroneous construction.

6. Blair is also entitled to recover, for the use of his subcontractor, Roanoke Marble and Granite Company, the excess wages paid by the subcontractor to its employees, pursuant to the Government's erroneous construction of the contract.

* * *

Petitioner's argument is so arranged, as to subject matter, that we find it difficult to determine, in many instances, the precise items (of the six allowed by the Court of Claims) under discussion. We feel that, in the interest of clarity, it is desirable to consider each of the items included in the judgment as a separate subject matter and have arranged our argument accordingly. Because the bad faith of the Government's representatives is a very material consideration under each of the items allowed, we also feel that, before discussing these individual items, it will be of assistance to the Court if we first dispose of the petitioner's argument (Br. 67-81) that there is no substantial evidence to support the findings in this regard.

I

The Evidence Overwhelmingly Supports the Findings Below That the Acts of the Government's Representatives Were so Arbitrary as to Imply Bad Faith.

In its argument on this point, petitioner refers primarily, and almost entirely, to the testimony of its own witnesses Feltham and Dodd, and ignores the testimony of numerous witnesses produced by Blair. The witnesses Feltham and Dodd, were, respectively, petitioner's supervising superintendent of construction and his assistant at the site of the work. In the petition filed in the Court of Claims it was charged (RI, 4-8) that these two men continuously harassed and hindered Blair and his representatives, in violation of Blair's rights under the contract, and throughout its performance acted arbitrarily, unreasonably and unfairly, as a result of which Blair suffered the losses and damages set forth in the petition and found by the Court of Claims.

These charges were supported in detail by the testimony of sixteen witnesses[10]. To rebut the testimony of

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(10) 1. The respondent, Algernon Blair (RII, 26-29, 40).

2. C. W. Roberts, Blair's general superintendent in charge of the work, whose qualifications were well known to, and had been highly praised by, Feltham before the work began (RII, 11, 31, 39, P's. Ex. 21; RII, 113, 115-122, 130-144, 148-152, 159).

3. Frederick E. Durden, Blair's assistant superintendent on the work in question (RII, 177, 186, 191, 193, 194).

4. Neal Gordon Andrew, who was specially detailed by Blair to stay at the job and try to smooth out the difficulties, but who had left Blair's employ at the time he testified (RII, 195-200, 203, 204-6, 207).

5. John T. Clarke, Blair's home office manager, a graduate architect with many years of experience in the construction business, including considerable service as a Government superintendent of construction (RII, 213-14, 309-10, 342-3).

6. C. B. Wilson, President of Roanoke Marble and Granite Company (RII, 238-240).

7. F. M. Godbey, foreman of the tile setters employed on

these sixteen witnesses on this particular subject, the Government produced only the two witnesses, Feltham and Dodd.. The record shows that there were five government inspectors (RII, 150, 406) at the work, including these two, but none of the other three was called as a witness, though one of them, W. R. Johnson, who ranked with Dodd as an assistant to Feltham (RII, 473-4) and whose duty was primarily to inspect the work of Redmon Heating Company, was in the employ of the Veterans Administration and stationed in Washington at the time petitioner's testimony was taken (RII, 405-6, 532). Other witnesses available to the government, whose knowledge of the facts would have thrown further light on this question of good faith,

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this work by Roanoke Marble and Granite Company (RII, 244-257).

8. John Nelson Garlick, tile setter employed by Roanoke Marble and Granite Company and a former union official (RII, 257-9).

9. D. L. Marsteller, a competitor of Roanoke Marble & Granite Company (RII, 290-2, 294-5).

(10) B. F. Moomaw, a member of the Virginia Advisory Board of the Public Works Administration, who participated actively in the adoption of wage scales for intermediate labor, mentioned in the findings at RI, 55 (RII, 296-302).

11. W. W. Hobbie, President of the Roanoke Webster Brick Company; and experienced in the construction business (RII, 310-312, 316-20).

12. E. E. Perkins, a former employee of Blair, engaged in the construction business at the time he testified (RII, 320-27).

13. T. E. Devinney, Blair's office manager at Roanoke (RII, 327-34).

14. C. C. Phipps, who was Blair's brick superintendent at Roanoke (RII, 335-40).

15. Joseph Hamilton Hill, a civil engineer, experienced in the construction business (RII, 705-11).

16. John Luther Powers, an experienced plumbing, heating and electrical contractor, who was asked, but refused, to undertake the completion of Redmon's contract after his default (RII, 711, 717-18).

but who were not called, were: The contracting officer, Colonel Tripp, who the Court of Claims found was constantly advised of the conduct of Feltham and Dodd (RI, 49); Redmon's superintendent, Mr. White, who was employed as an assistant by the superintendent of Virginia Engineering Company, which took over Redmon's work when he defaulted (RII, 60, 102, 179); and Mr. Updike, superintendent of the Virginia Engineering Company (RII, 67).

In short, of eight men outside of Blair's organization available to the Government and having the greatest knowledge of the facts, it has called as witnesses only the two whose integrity has been impeached by the sixteen witnesses above mentioned and by the findings of the court below. The unexplained absence from the witness stand of the remaining six is a matter of great significance in determining the weight to be given the testimony of Feltham and Dodd.

Of the sixteen witnesses who testified for Blair, eight had no connection with Blair at the time of testifying, and five had never had any such connection[11]. Their testimony establishes overwhelmingly the unreasonable, unauthorized and arbitrary character of the acts of Feltham and Dodd which are related in Findings 15-20, inclusive (RI, 44-74). On brief, petitioner chooses (Br. pp. 71-81) to discuss only four of such instances, which are treated as illustrative—on the theory, apparently, that if good faith can be established in those instances, this Court should assume that there was good faith in every instance and should set aside the findings in all other cases of bad faith without an examination of the testimony. This assumption is so

(11) Petition erroneously asserts (Br. 78) that Hill was "the manufacturer who had sold respondent the Pans," but there is no evidence to support this and we assert that it is not true.

clearly unsound[12] that we shall not prolong this brief by discussing the testimony supporting other findings of arbitrary and capricious conduct, but shall confine our discussion to the four instances discussed by petitioner:

1 Wage rulings covering semi-skilled labor.

The facts appear in detail in Findings 17-19 (RI, 51-70) and are summarized at pp. 14-20, *supra*.

There can be no doubt, from the clear and unambiguous language of the contract, as well as the negotiations preceding its execution, that the parties deliberately refrained from fixing the minimum wage rates for intermediate or semi-skilled labor, though recognizing the existence of this class as customarily entitled to a rate in excess of that paid common labor, but less than that paid skilled mechanics. This custom was universally recognized.

At the beginning of Blair's work at Roanoke, he prepared a schedule of rates to be paid such workers, which Feltham examined and approved. However, shortly thereafter Feltham and Dodd became angry because certain unfair decisions made by them were overruled on appeal to the contracting officer, and they then entered upon the course of unreasonable and unfair conduct toward Blair that is so graphically described in Finding 20 (RI, 70-74). As a part of this plan, they hampered Blair in his attempt to appeal from their unjust rulings, by refusing to give him written orders which could be made the basis of an appeal, and coerced him into obedience by exacting impossible requirements and rejecting properly constructed work

(12) See note 9, p. 21, supra.

as a punishment"[13]. Despite his earlier approval of the pay schedule, and obviously as a part of the course of conduct above described, Feltham in March informed Blair that this schedule would no longer be approved, on the sole ground that the contract recognized only "unskilled" and "skilled" labor, and that any workman who used a tool, regardless of the degree of skill required for his work, must be classified and paid as a skilled mechanic. There was no controversy about the matter with any employee or representative of labor. Feltham's decision involved only an interpretation of the contract, and one so arbitrary and grossly erroneous, the Court of Claims found, as to imply bad faith.

To bolster this decision, Feltham wrote the Department of Labor, asserting that the contract covered only skilled and unskilled labor, and asking, *under this interpretation of the contract,* in which class the steel rodmen should be placed. The recipient of that letter (one Hollenbeck) therefore was given no opportunity to examine the real question in dispute, and when he advised that these men "should be considered skilled workmen," he was not touching on the real issue. Feltham then, without any further inquiry, extended his ruling concerning rodmen's pay to the pay of other classes of semi-skilled workers, such as rough carpenters and improvers or experienced helpers, hereinafter discussed.

On appeal to the contracting officer, he made no independent decision on the question until it was too late to give Blair relief. (See *infra,* p. 20). The court found as a

(13) Under Article 6(a) of the contract (P's. Ex. 2), Blair had no alternative but to obey orders to remove at once work rejected as being improper. Likewise, Article 15 (Petitioner's Brief, Appendix p. 85) provided that, pending appeal of any dispute, "the contractor shall diligently proceed with the work *as directed*" (Emphasis supplied).

fact that this construction of the contract, made by Feltham, and the failure of the contracting officer to promptly overrule him, were "unauthorized, arbitrary and so grossly erroneous as to imply bad faith" (RI, 59-61).

For example, the Court found as a fact that the telegram sent by the Government's superintendent of construction to the contracting officer on December 13, 1934, requesting an interpretation of the contract as to the wage rates of men running terrazzo grinding machines was actually "a misleading and false submission of the true controversy" and that "honesty required that the superintendent ask the contracting officer for an interpretation whether the work of operating terrazzo floor grinding machines should be classified as skilled or semi-skilled labor." (RI, 68). The contracting officer finally decided and ruled on January 14, 1935, as Blair and his subcontractor had all along contended, that the contract did contemplate and provide for intermediate classifications of labor at a minimum wage rate between that fixed for skilled labor and common labor, but that decision was not made by the contracting officer until after the work was completed. (RI, 68, 90)

These findings are supported not only by the facts above recited, but by the testimony of numerous witnesses and exhibits[14], overwhelmingly establishing the fact that such workmen were universally classified as "semi-skilled" laborers. On behalf of the Government, the only witnesses were Feltham and Dodd. Feltham, who made the ruling, offered no justification for his interpretation, but referred questions to Dodd (RII, 426-7). Dodd, though insisting that these men should be classified as skilled workmen, referred to the Associated General Contractors of America as an authority on the definition of "skilled" labor (RII,

(14) See, for example, Blair, RII, 28-9; Roberts, RII, 114, 151-2; Devinney, RH, 330; Moomaw, RII, 302; Clarke, RII, 309-10; also P's Exs. 38, 39, 107.

511). Blair then introduced in evidence the publication of that Association on the subject, entitled "Construction Operations", which classifies these workmen as semi-skilled (RII, 523-4, P's. Ex. 107). The contradictory and unreliable testimony of Feltham and Dodd on numerous other subjects[15], the false reports made by them on many other facts (RI, 36, 44, 73), and the ultimate reversal of this erroneous construction of the contract by the contracting officer (RI, 69-70, 90; discussion *infra*, pp. 63-4) not only amply support the court's findings as to bad faith, but we submit would make any contrary finding untenable.

2. Outside scaffolding.

Petitioner's discussion of the evidence is, to put it mildly, highly misleading. Petitioner argues that Feltham's threats amounted to "nothing more than a prophesy that ultimately respondent would himself discover, if he disregarded that advice, that it was impossible to lay the brick in accordance with the specifications without outside scaffolding", (Br. p. 75). Such a conclusion could only be reached by disregarding all of the testimony on the sub-

(15) For example: As to the requirement of outside scaffolds and the bolting of pans, see *infra*, pp. 30-34. As to the Redmon delays, Feltham testified (RII, 348-9) that respondent "had done nothing whatever" up to January 1, 1934, and did not even start work until January 15, but on cross-examination admitted that respondent's work had been going on constantly since December 19, 1933 (RII, 415-16). He said that respondent's brick work was poor or "cheap" (RII. 394), but praised it highly in a letter written after the work was completed. (RII, 419-20, P's. Ex. 103). While Dodd's memory of details construed adversely to respondent was remarkable, he could not remember whether Redmon's failure to receive materials prior to March 29, 1934, was delaying the work (RII, 532-3). Dodd's testimony concerning the custom with reference to wages for semi-skilled carpenters (RII, 481-3) is so filled with contradiction as to be unintelligible.

ject, except that of Feltham (whose talent for falsehood —see Findings 7, RI, 36; 14, RI. 44; and 20, RI, 73—is not disputed by petitioner). The testimony of other witnesses[16] is that Feltham conceded he had no right under the contract to force the building of these scaffolds; that, for this reason, he refused to put his order in writing, but threatened Blair nevertheless with the statement that "he (Feltham) could and would *make* plaintiff sorry if he did not do so or *make* him wish he had"; that this type of threat occurred frequently; that disobedience to this admittedly unauthorized order was followed at once by the outrageous demands and requirements as to microscopic uniformity described in the findings (RI, 47), which demands and requirements ended as soon as Blair began building the scaffolds (RI, 48). There is no escape from the Court's finding that these improper exactions were designed solely for the purpose of forcing Blair, by means from which an appeal could not be taken, to build the outside scaffolds, and that these requirements were so grossly erroneous as to imply bad faith (RI, 47). If any further support for the finding were necessary, it is supplied by the fact, which even Feltham does not deny, that Blair had completed identical construction, under a prior contract where Feltham was the Government's supervising superintendent, with Feltham's full approval, by the overhand method, without the use of outside scaffolds (RI, 46-47).

Petitioner (Br. pp. 75-76) interprets an isolated statement by respondent's brick superintendent as meaning that Blair did in fact find it necessary to build the outside scaffolds in order to lay the brick in accordance with the specifications. However, this witness stated categorically (RI, 337, 339) that the work could have been done in accordance with the specifications as well, or better, if the masons

(16) RII, 40, 131, 158, 192-3, 194, 316-19, 329, 337-9, 340, 382-3, 695, 698.

had worked from inside the building without the use of outside scaffolds, and that such was the customary and approved method. In this he is supported by all of the witnesses except Feltham alone.

3. Bolting of metal pans.

Here again, petitioner relies almost entirely upon the testimony of the discredited Feltham, and mis-states the testimony of Blair's witnesses without indicating the parts of the record where that testimony may be found. The testimony of Blair's witnesses, on direct, was as follows:[17]

At the time that Redmon was delaying Blair most critically, by failure to install his pipes and conduits in the reinforcing steel so that concrete could be poured, Feltham and Dodd entered upon a course of exacting requirements of Blair which would have the effect of slowing down Blair's progress, in the apparently vain hope that Redmon could catch up. The metal pans are simply forms for holding the reinforcing steel and concrete in place during the pouring[18]. As a part of the course of conduct just mentioned, these inspectors required that holes be drilled in these pans at every place where they overlapped and that they be bolted together. This was not only contrary to the custom in the trade, and, therefore, an unforseeable requirement when Blair submitted his bid, but it served no useful purpose and no other purpose than to delay Blair's progress. As further evidence of the bad faith of this requirement, Feltham and Dodd no longer exacted it after Redmon's successor,

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(17) RII, 29, 118-20, 191, 343, 680-1, 685, 696-7, 708-9.

(18) See defendant's Exhibit D for photographs of such pans in place.

Virginia Engineering Company, supplied sufficient men[19] to keep up with Blair's work (RI, 50-51).

The only witness called by petitioner to testify on this subject was Feltham. He conceded that he had required this and attempted to justify his action on the ground that the pans were old and bent when received on the job and would have permitted leakage of concrete (RII, 366-369). He also asserted that the pans were manufactured with holes for such bolting (RII, 366).

Blair, in rebuttal, called as an expert a manufacturer of such pans, who flatly contradicted the statement about manufacturing, and pointed out that it would be useless to supply such holes, since the overlap varies and the holes would not coincide (RII, 708-709). It is undisputed that the same pans were in use after the inspectors abandoned this requirement and were, therefore, as the trial court found (RI, 51), older and, if anything, more out of shape than when the bolting was required (RII, 680). The court's attention is invited to the photographs of such pans in place (D's. Ex. D), from which it is obvious that the weight of the concrete would, as the trial court found (RI, 50), close the small space indicated at the over-lap. Feltham testified (RII, 366) that the photograph of pans on Building No. 6 (part of Exhibit D) showed "pans not properly bolted together", whereas on cross-examination he admitted (RII, 428-9) that these photographs were taken under the supervision of himself and Dodd, *after approval of the pans in place*. This corroborates the testimony for Blair (RII, 680) that the pans on Building No. 6 were not required to be bolted, for the reasons above mentioned.

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(19) Within two weeks after Virginia Engineering Company took over this work, it had a working force of more than 200, as compared with the 6 or 8 men employed by Redmon (RI, 41).

4. Temperature reinforcing steel.

Petitioner here sets up a straw man for destruction. The court's finding on this subject (RI, 51) is not that the action of the Government superintendent "arbitrarily" or "capriciously" required the use of this steel, but simply that he "directed and required" it, that Blair protested, and that the contracting officer sustained the protest, but refused to reimburse Blair for expense incurred in his compliance with the improper requirement. Discussion of whether Feltham's requirement was arbitrary or capricious is, therefore, irrelevant.

Petitioner wisely refrains from discussing the numerous instances, other than those above discussed, in which the Court of Claims found acts of Government representatives to be arbitrary and capricious and clearly done in bad faith. In those numerous instances, the underlying testimony is even more overwhelmingly in accord with the Court's findings than in the few cases above discussed. It is easy for government counsel to assert that the findings of the Court of Claims in this respect amount to no more than "cliches" (Br. p. 68), but the mere statement of counsel does not meet petitioner's burden of establishing that "there was no substantial evidence to support" the findings.

II

Petitioner Was Properly Held Liable for Damages and Losses Sustained by Respondent as a Result of Delays Caused by the Petitioner and Interference with the Orderly Progress of Respondent's Work. (Findings 1-14, Item 1 of Judgment.)

The facts concerning this issue, summarized *supra* at pp.

2-12, appear in detail in the findings of the Court of Claims (RI. 31-44). In stark outline, the case presented is this:

The Government, in its invitation for competitive bids, stated that a separate contract would be let for the installation of plumbing, heating and electrical equipment (sometimes called "mechanical" work) to be installed in and between the buildings during the course of their construction. The invitation also advised bidders that the same general specifications, a copy of which was attached to the invitation, would cover both contracts, and that bids would be considered only from responsible bidders, with adequate plant facilities, suitable financial status, and appropriate technical experience. The specifications further provided that each of the independent contractors should fully cooperate with and fit his work into that of other contractors "as may be directed by the contracting officer", and should not "commit or permit any act which will interfere with the performance of work by any other contractor".

In reliance upon these representations, Blair prepared and submitted a bid for the general construction, which was accepted, and entered into the contract in suit and the performance of the work thereunder in December, 1933 (RI, 32-33).

Meanwhile, the Government entered into a contract with Redmon for the installation of the mechanical equipment work in the buildings. That contract contained the same provisions as to cooperation with other contractors that had appeared in the specifications. No inquiry or investigation was made by the Government as to Redmon's plant equipment or financial status before entering into this contract (RI, 36).

In cases of this kind, involving separate contracts for construction and mechanical installation, it is the usual and recognized practice that the mechanical contractor must install his work in the buildings in the order permit-

ted by the progress of the general construction (RI, 36-7). He must "coordinate his own activity" into the building contractor's schedule. *United States* v. *Rice*, 317 U. S. 61. He knows by the very nature of his contract that it is "subservient to the main contract for the erection" of the buildings. *Gertner* v. *United States*, 76 C. Cls. 643. The reason for this requirement is obvious from the nature of the work, described in detail at RI, 40-44. To perform his work, the general contractor is entitled to work upon an orderly and systematic plan. Until the plumbing contractor has placed his underground pipes in the buildings, the general contractor can not build his foundations and floors; until his underground pipes connecting the buildings are placed, the general contractor cannot grade or pave; until he has located his pipe openings through walls, the general contractor cannot install the "sleeves" through which the pipes are to pass; and until he has inserted his pipes and wiring inside the frame work for walls and ceilings, the general contractor cannot place his lath or plaster and complete the finishing of the walls (RII, 15-18, 21-3, 56-64, 77, 82, 93-4, 96, 98-9, 100, 106, 108, 179, 187-9, 673-4, 713-16, 720-22). Cf. *Jefferson Hotel Co.* v. *Brumbaugh*, (CCA 4) 168 F. 867, 874.

Reasonable cooperation by Redmon required his presence at the site of the work in January in order to work out a coordinated plan with Blair; that he begin at that time, with a large force, the laying of his pipes outside the buildings and under the basement excavations for the buildings[20]; and that he thereafter prosecute his inside work as the buildings should progress (RI, 40-42). Redmon, however, did nothing until March 19th, three months after petitioner notified him to proceed, when (threatened by pe-

(20) P's. Ex. 10 is a map showing the extent of this work.

titioner with cancellation of his contract) he sent his superintendent to the site (RI, 36).

Meanwhile, Blair on January 22, 1934 (App., *infra* p. 2) wrote Redmon for information urgently needed as a prerequisite before Blair could order structural steel, and on January 24, 1934 (id., p. 4), in response to a request from Redmon as to Blair's anticipated progress, Blair replied that he expected to complete his work by November 1. On January 25 (id., p. 5), Dodd wrote the Veterans Administration requesting that Redmon be directed to have a representative report to the site at once. From that time until March 19, when Redmon's representative arrived at Roanoke, the need for his presence there and the fact that his failure to cooperate and begin his work was delaying and disrupting Blair's work, were repeatedly called to the attention of the Government representatives by Blair. The contracting officer and his representatives repeatedly, both in response to these urgings and independently, called upon Redmon to begin his work, advising him that Blair was being delayed by his failure to perform in accordance with the contract and specifications (RI, 40). It was not until March 13, when the contracting officer threatened cancellation of Redmon's contract (App., *infra*, pp. 17, 18), that Redmon showed the slightest intention of doing anything. What he did then was a mere gesture, however. He sent his superintendent, without workmen, tools or materials, to the job site on the date of expiration of this ultimatum; began work in a desultory fashion on March 28; and never had sufficient workmen, equipment or materials (RI, 40-4). During the period of more than six months following the execution of his contract, Redmon never did any work of consequence which was of any value to Blair's proper progress (RI, 43; RII, 102).

Redmon's failure to commence and prosecute his work was due to financial difficulties and wilful neglect, which

would have been apparent at once if petitioner had made any reasonable inquiry as early as January (RI, 36).

A comparison of Redmon's actual progress with that of Blair, and with what the Government's representatives reported as "normal" progress appears in the table at page 43 of the transcript. The Government cancelled Redmon's contract on June 26, after he had announced his inability to continue. At that time, although more than six months had passed, he had done only 6.3 per cent of his work, as against an "expected" normal[21] of 36 per cent. After Redmon's contract was terminated, no further progress of consequence was made on the mechanical work until the Virginia Engineering Company took it over on July 16. That company immediately employed a force of over 200 workmen, where Redmon had employed from 6 to 8, and during the succeeding seven months completed the remaining 93.7 per cent of the mechanical work (RI, 41-44). However, it was impossible for that company to repair the damage already suffered by Blair as a result of the delays and interference above described. The Court of Claims has found that this damage amounted to $51,249.52 (RI, 44).

Petitioner does not question the general rule, so firmly embedded in our law, that the Government is liable for delays and interference caused by its own acts, but seeks to distinguish this case on several grounds:

(1) The alleged failure of respondent to exhaust the remedies provided in Article 15 of the contract.

Article 15 (which appears in full at pages 85-86 of the appendix to petitioner's brief) applies only to cases where there are "disputes concerning questions arising under

(21) The Government's "normal" progress was based upon completion in 420 days. On the basis of Blair's anticipated completion by November 1, 1934, therefore, his percentage was much lower than this 6.3 per cent.

this contract". In such instances, if the contracting officer or his duly authorized representative "decides" the matter in dispute, the contractor is bound by such decision, unless he appeals in writing within thirty days to the head of the department. In that event, the decision of the head of the department is "final and conclusive".

Apparently, it is the petitioner's position that this provision in some way precludes recovery of damages for losses resulting from delays and interference on the part of the Government, although the point is merely stated, without elaboration, in petitioner's brief.

We submit that this provision of the contract has no bearing on this case. In the first place, Article 15 makes no reference to the matter of claims for damages resulting from delays caused by the Government[22], but relates only to disputes. There was never any *dispute* about the fact of Redmon's failure to perform his contractual obligation, or the effect of that failure on the course of Blair's work. There was introduced in evidence the correspondence on the subject between Blair and the contracting officer (P's. Ex. 27), between Blair and Redmon (P's. Ex. 28), and between the contracting officer and Redmon (P's. Ex. 42). We include as an appendix to this brief some of the typical letters so passing between the parties, arranged in chronological order. An examination of this correspondence demonstrates at once the accuracy of the findings below (RI, 40) that Blair did, from the very beginning, protest in writing to the contracting officer concerning Redmon's failures and the resulting disruption of Blair's work. These letters further demonstrate that there never was any "dispute" about the matter; that the contracting officer—far from "deciding" anything adverse to Blair's representations, from which an appeal could be taken—and his representatives at the site shared Blair's concern and indigna-

(22) *Phoenix Bridge Co. v. United States*, 85 C. Cls. 603, 630. *Plato v. United States*, 86 C. Cls. 665, 677.

tion at Redmon's inaction, and bombarded Redmon with demands that he fulfill his contract[23]. If there had been any "dispute" about this matter requiring a "decision" by the contracting officer, his letter to Blair of March 17, 1934 (App., *infra*, pp. 21, 22), would have to be construed as a decision in Blair's favor. That letter acknowledged a "lack of proper cooperation" on Redmon's part, advised Blair of the decision to cancel Redmon's contract if he did not begin work at once, and requested Blair to keep the contracting officer advised as to any further difficulties on this score.

Thus, if Article 15 has any bearing on this item of the claim, it serves merely to remove all doubt of Blair's right of recovery, in that the contracting officer's "decision" sustained Blair's position.

However, as we have demonstrated above, the petitioner's failure to investigate Redmon's resources before awarding the contract and its failure to put a stop to his interferences with Blair's work constituted a clear breach of contract, and not a "dispute" concerning any "question" arising under the contract. Petitioner's argument, therefore, is based upon the obviously unsound premise that Article 15 leaves it to the contracting officer or the head of the department to decide whether there has been a breach of the contract. Almost every breach of contract (unless waived by the offended party) will produce a "dispute", in the common acceptation of that term, but it would be shocking to hold that the parties to this contract intended to entrust to the agents of one of them the power of final decision as to whether their principal had performed or failed to perform its obligations thereunder.

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(23) Feltham and Dodd told respondent's employees from the outset that they did not believe Redmon would complete his contract (RII, 103, 181).

(2) The effect of Blair's performance within the maximum contract period.

The contract provided that part of the work should be completed "within" 420 days from notice to proceed, and other parts "within" 30 to 60 days less than that time (RI, 32). However, it was the desire of the Government and the intention of the parties to the contract that Blair's work be completed as soon as possible after notice to proceed had been given, and the contracting officer so notified Blair in the early stages of the work and thereafter (RI, 37, 38). Blair computed his bid and the cost thereof to the Government on the basis of completion by November 1, 1934 (RI, 34, 35). This was a reasonable estimate[24], and Blair would have performed within the time so estimated if petitioner had performed its obligations with reference to the mechanical work (RI, 38). This plan was made known, soon after the work commenced, to petitioner (RI, 35) and to Redmon (RI, 37), *neither of whom ever objected thereto.*

In accordance with the usual practice in such cases, Blair prepared, in January, a detailed schedule showing the planned date of completion of each of the component parts of the work, consistent with the announced plan, and delivered a copy to petitioner and to Redmon's superintendent shortly after his arrival at the site of the work. Petitioner's officers posted this schedule in their field office at the site (RI, 37), thus giving it their approval.

Petitioner does not assert that the findings just summarized are contrary to the evidence, but does attack them by indirection in asserting (Br. p. 23) that there was no "undertaking by the Government guaranteeing one con-

(24) The testimony (RII, 2-3, 5-6, 50, 757) is undisputed that this was normal, custimory procedure, and that one of the most important elements in estimating for bid purposes is that of the time required to do the work.

tractor against interference or delay caused by the other", and that Redmon had the right to take the full 420 days to complete his work. The Government not only had the duty, implied in all such contracts[25] to avoid delays and interference with the orderly progress of Blair's work, but it promised him, in the invitation for bids, that the mechanical contract would be let to a responsible bidder, and it included Article 13 in both contracts as a means of carrying out this obligation. That article required that Redmon "fully cooperate" with Blair and "carefully fit his own work" to Blairs work "as may be directed by the contracting officer". The findings show that Redmon failed from the outset, to perform these obligations and thereby forfeited any right he might otherwise have had in this connection.

Petitioner's argument that neither the Government nor Redmon was obligated to cooperate in the plan[26] to complete the job before February 14, 1935, is in conflict with the findings already discussed, which are binding on petitioner here. Not only is the trade custom concerning correlation of mechanical work to the work of the builder established by the court's findings, above discussed, but it has been repeatedly recognized by judicial decisions.[27] The trade custom is founded upon common sense. If the mechanical contractor could take 420 days to install his plumb-

(25) See footnotes 5-7, inclusive, p. 21, *supra*.

(26) It is to be noted that Redmon, on January 23, 1934, voluntarily requested Blair for his plans as to the date of completion (App., infra, p. 3); that Blair advised him on January 24th of his intention to finish by November 1st (App., infra, p. 4); and that neither Redmon nor the Government ever expressed any objection to the plan, of which they were fully advised.

(27) See cases cited *supra*, p. 36. Judge Madden, in his dissenting opinion in the *Rice* case (95 C. Cls. 84, 107-8) said: ". . . from the specifications and contract, plaintiff must have known that its time of performance was dependent upon the progress of the building contractor."

ing, heating and electrical work, he could delay the building contractor for many days thereafter.

The obligation of petitioner therefore, entirely apart from the promise given in the specifications and in Article 13 of the contract, to prevent interference with the orderly and reasonable progress of Blair's work, carried with it the obligation to prevent such interference by other contractors over whom the Government had control and Blair did not. Petitioner now asserts that (Br. p. 23) it is "impossible to discern" the source of such an affirmative duty on the part of the Government. That duty had its origin in the covenant, always implied in such a contract, to refrain from interference with performance by the other party. The Government, by delegating the installation of the mechanical work to an independent contractor, instead of undertaking that installation through its own employees, could not avoid its responsibility to prevent such interference[28].

Petitioner seeks to take this case out of the general rule by asserting that it falls within the rule of *United States* v. *Rice*, 317 U. S. 61, and *Crook Co.* v. *United States*, 270 U. S. 4. In so doing, petitioner ignores the wide differences in the factual situations presented and the reasoning of this court with reference thereto.

In the *Rice* case, the question presented was whether a *mechanical contractor* could recover damages for a delay resulting from an *authorized* postponement of the *beginning* of his work, which postponement resulted from the unexpected discovery of an unsuitable soil condition. This situation was covered by Article 3 of the contract (identical in terms with Article 3 of the contract in suit), under which the Government reserved the right to make changes which might interrupt the work. This court said that "delays in-

(28) *Miller v. United States*, 49 C. Cls. 276, 282; *Michigan Ave. M. E. Church v. Hearson*, 41 Ill. App. 89.

cident to the permitted changes cannot amount to a breach of contract" and *pointed out that it was the duty of the mechanical contractor to fit his own activity into the schedule of the building contractor.*

In the *Crook* case, the plaintiff, as in the *Rice* case, was the mechanical equipment contractor, having agreed to begin its work *after* the completion of buildings then in process of construction by others. The mechanical contractor was not to begin work until delivery of the contract to it by the government, and was to complete within 200 days thereafter. The contract recited only the *approximate* dates of completion of the construction work. Such construction work was not completed by the approximate dates so stated. The cause of the delays does not appear, although this Court held them to be "unavoidable." The mechanical contractor, without protest, began its work when the buildings were ready, but because of this delay, did not complete until 387 days after delivery of his contract. There was no showing of interference by the government *after the work began.* The government extended the permitted time of completion accordingly and paid the full contract price. The mechanical contractor then sued for damages resulting from the delay in commencement of the work. The Court of Claims denied recovery on the ground that plaintiff waived any claim it might have had by going on with the work without protest. This Court affirmed on the ground that, because the dates of completion of preliminary work by others were "approximate" only, "it was obvious on the face of the contract" that the date for completion of plaintiff's work was "provisional," and that, under such circumstances, the government was not bound to any particular date.

In the instant case, there is no pretense that there was any exercise by the Government of a right to postpone the beginning of the work upon a discovery of changed condi-

tions, nor was there any such postponement. Blair's work was not to await completion of Redmon's work, but the latter was to be fitted into Blair's schedule. The Government gave Blair and Redmon notice to proceed with the work, and at all times thereafter urged early completion. At the same time, it did nothing effective for over six months to require Redmon to observe his contractual obligation to coordinate his work with Blair's schedule.

Petitioner argues (Br. 27-28) that, because it had the "reserved contractual right" to *make changes* without liability for resulting delays, it is not liable for its delays and interference in this case. Apparently, petitioner, considers this Court's decision in *United States v. Rice, supra*, to mean that a contractor may not, under any circumstances, recover damages for delays due to interference by the Government, if Article 9 is incorporated in his contract. We do not so interpret that decision. In *Diamond v. United States*, 98 C. Cls. 543, 551-2, Judge Madden said:

> "We do not read the case of *United States* v. *Rice*, . . . as meaning that the Government can without any privilege reserved in the contract and without any consideration whatever for damage caused to the contractor, delay the performance of the contract as much as it pleases, and pay the bill for the damage merely by refraining from assessing liquidated damages against the contractor for his late completion. If the Government should expressly reserve such an unreasonable privilege in its contracts it would pay heavily for the privilege in the increased amounts of bids which prudent contractors would submit. We see no reason why the Government should want such a privilege, or should be willing to pay for it. And we see no reason why it should get such a privilege

without reserving it or paying for it, as we think it did not do in this case.

"In the *Rice* case, *supra*, because of unforeseen soil conditions, it was impossible to build the building into which the plumbing contractor, the plaintiff in that case, was to install his plumbing, and the building had to be redesigned and relocated with consequent delay. There was nothing inconsiderate or unreasonable about the Government's conduct in that case, which contributed to the delay, or which would have amounted to a breach of contract even as between ordinary persons."

To the same effect is *Rogers* v. *United States*, 99 C. Cls. 393, 411.

Petitioner asserts (Br. p. 30) that the Government had no right or duty to make it possible for Blair to finish his work before the expiration of the 420-day maximum period, "by risking an unreasonable termination of Redmon's contract" and thereby releasing Redmon's surety on his performance bond. This assertion assumes the existence of facts in square conflict with unchallenged findings of the Court of Claims. Redmon's contract (P's. Ex. 13) required him to commence his work "promptly after the date of receipt of notice to proceed." He received that notice on December 21, 1933 (RI, 35), but admittedly did no work whatever until March 28, more than three months later (RI, 41). In short, he violated this provision of the contract at the outset, and stood in default for months. Likewise, by failing to obey the many directions of the contracting officer (see Appendix, *infra*) to begin work, he violated the provision in the specifications (RI, 22) and in Article 13 of his contract that he fit his work into that of other contractors "as . . . directed by the contracting officer." The

Court of Claims found as a fact (RI, 44), on the basis of this and other related facts, that petitioner "delayed unreasonably in taking timely and proper action to prevent delay to plaintiff and in terminating Redmon's contract for his failure properly to proceed with and prosecute his work to the end that such work be kept abreast of that required to be performed by plaintiff." It was further found (RI, 36) that, if petitioner had made reasonable inquiry in January, 1934, it would have found that Redmon's delays were due to financial difficulties and wilful neglect. The Court of Claims concluded (RI, 84) that such inquiry would have shown the utter impossibility of performance by Redmon[29]. The findings are not impeached directly by petitioner, and we submit that the trial court's conclusion is the only reasonable conclusion to be drawn from these circumstances. The Government should not be allowed to shut its eyes to such realities and argue that it was not, prior to June 26, reasonably clear that completion was unlikely. The contention that the Government could not have terminated Redmon's contract prior to June 26 without itself breaching the contract is untenable, since Redmon in January defaulted in his contractual obligations to commence his work promptly and continue it as directed by the contracting officer, and continued in default at all times thereafter. The Government ignored this fact, and did not terminate the contract until Redmon himself advised that he was unable to continue.

While petitioner refrains from stating it explicitly, it argues by implication that, because the proviso in Article 9 entitles a contractor to an extension of time for delays caused by the Government, this is the sole remedy of the contractor for Government interference with his work, no

(29) The Government's representatives at the job did not believe, as early as January, that he would fulfill his contract. See footnote 23, p. 40, *supra*.

matter how flagrant, and that, if the interference does not delay the contractor beyond the maximum time limit, he has no remedy for losses so suffered. The law on this question was firmly established long before the contract in suit was signed. The Government made the same contention in the case of *William Cramp & Sons* v. *United States*, 41 C. Cls. 164, but the Court said (pp. 194-5):

> "*It was not necessary to write into the contract that in case of breach the party injured should be entitled to redress for the damages thereby sustained.* That right accrued when the default took place, and it would be no answer to say that because additional time is provided for in the contract therefore no breach occurred, for the extension of time is dependent upon a breach—that is to say, delay caused by the Government in the prosecution of the work." (Emphasis supplied.)

The same Court, in *Levering & Garrigues Co.* v. *United States*, 73 C. Cls. 566, 577, said:

> "The Act of the contracting officer in granting the plaintiff an extension of time in which to complete the contract equal to the delay caused by the Government does not relieve the defendant from liability to the plaintiff for losses sustained by it by reason of such delay. *Crook Co.* v. *United States*, 59 C. Cls. 348; *William Cramp & Sons* v. *U. S.*, 41 C. Cls. 164."

As Mr. Justice Murphy said in the recent case of *United States* v. *Brooks-Callaway Co.*, 318 U. S. 120, 122:

> "The purpose of the proviso is to remove uncer-

tainty and needless litigation by defining with some particularity the otherwise hazy area of *unforseeable* events which might excuse nonperformance within the contract period. Thus *contractors know they are not to be penalized for unexpected impediments to prompt performance*, and, since their bids can be based on *foreseeable* and *probable*, rather than *possible* hindrances, the Government secures the benefit of lower bids and an enlarged selection of bidders." (Emphasis supplied.)

In *Selden Brick Co.* v. *Regents of University of Michigan*, (E. D. Mich.), 274 Fed. 982, 984, it was said with reference to a similar contention:

"The contention of defendant that this provision limits and measures the extent of the rights and remedy of the plaintiff in the event of delay occasioned through the fault of defendant and deprives the plaintiff of the right to recover damages caused through such delay cannot, in my opinion, be sustained. In the absence of an express stipulation relieving the defendant from liability for damages caused by its breach of this contract, it would, of course, be liable therefor. . . .

"I am satisfied that the provision in question, properly construed, was intended to, and does, create an exemption in favor of the plaintiff, and not of the defendant, and that to interpret it otherwise would be to import into it a meaning which the parties thereto have not themselves expressed."

To the same effect is *Moran Bros. Co.* v. *United States*, 61 C. Cls. 73, 102.

These principles are not altered by the fact that the con-

tractor, despite the delays, completes his work in less time than the permitted maximum. In *J. L. Young Engineering Company* v. *United States*, 98 C. Cls. 310, 324, Judge Madden said:

> "The defendant asserts that plaintiff could not have been delayed more than seventy days because it completed the job within seventy days after the date called for in the contract. But the evidence persuades us that, if plaintiff's work had not been delayed by the defendant's breach of contract, it would have completed it some time before the agreed date. The contract contained no promise that plaintiff would not complete the work before the agreed date, and gave the defendant no right to unreasonably prevent earlier completion. *Blair* v. *U. S.*, decided Oct. 5, 1942.
>
> "We think the fact that plaintiff requested, and the defendant granted, only a sixty-day extension of time beyond the agreed date for plaintiff to complete the contract does not prove that plaintiff was not delayed more than sixty days. Plaintiff and the officer with whom he negotiated the sixty-day extension both understood that the purpose of the extension was to relieve plaintiff of the assessment of liquidated damages for completion later than the time fixed in the contract. Plaintiff asked for only such time as he needed for that purpose. The Contracting Officer did not intend to adjudicate any question of liability for unreasonable delay."

In *Guerini Stone Co.* v. *P. J. Carlin Const. Co.*, 248 U. S. 334, 341, Justice Pitney said:

> "From the fact that . . . plaintiff was obliged to finish the work in 300 days, and . . . this time was extended for plaintiff's benefit in the case of delays caused by the owner . . . it does not follow that plaintiff was not entitled to finish the work more speedily if it could do so. . . ."

In *Bates & Rogers Const. Co.* v. *Board of Com'rs.* (N. D. Ohio), 274 F. 659, 666, it was said:

> "Manifestly, when time is made the essence of the contract, and the contractor is required to complete it within a fixed period, he acquires an equal right to complete it during that period, and no construction of isolated paragraphs can be indulged or permitted which would destroy the essence of the contract and deprive it of its mutuality."

It is not claimed that the failure of the Government to perform its part of the contract was in any way brought about by the act of Blair, nor is its default sought to be excused by anything that Blair did, but it is argued that, because the Government would have been required, for Blair's benefit, to extend the time if the Government's default had lasted longer, therefore the Government has no other liability for such a breach. This proposition is somewhat startling, but unless some artificial and abstruse rule of law has taken the place of and superseded natural justice and fair dealing, it is as unsound and untenable as it is original and ingenious. The petitioner in effect pleads the breach of its contract as a bar to the recovery of damages for the breach.

The contract did fix a measure of damages that Blair should pay and the United States should receive for a breach of contract on the part of Blair, but it will hardly be seriously contended that, if no such provision had been

inserted in the contract, the United States would not have been entitled to recover such damages as it might have sustained by reason of such a breach, and if that be true, upon what rule would Blair be debarred from like recovery by reason of a breach on the part of the United States?

The reason, and the only reason, that the law gives to the injured party a right of action for a breach of contract is to compensate him for his losses. The damages it awards are in no sense punitive. How, then, could Blair be compensated for losses sustained by him by being relieved of penalties that he had never incurred?

Whether the contract said so or not, if the delay was caused by the United States, no penalty could be imposed upon Blair. It should not be necessary to argue such a proposition.

(3) Inclusion of overhead costs in the measure of damages.

Having determined that interferences and delays caused by the Government resulted in Blair's work being prolonged for 3½ months beyond the date on which he could have completed it, the Court of Claims proceeded to fix the damages to which respondent was entitled, aggregating $51,249.52 (RI, 44).

In its specification of errors (Pet. for Cert. p. 16) petitioner claims error in this respect as follows, and only as follows (emphasis supplied):

> "The Court of Claims erred . . . in including general office overhead in the computation of damages for delay *in the absence of any finding that such overhead resulted solely from such delay.*"

The complaint, therefore, is that the Court of Claims did

not find that overhead costs were increased by the delays. This assignment is effectively answered by the following extract from Finding 14 (RI, 44):

> "Plaintiff was unreasonably delayed in the completion of the work called for by his contract for a period of 3½ months, as a result of which he incurred and paid the following increased costs in excess of the costs included in the contract price and in excess of the costs which he would otherwise have incurred except for such delay: . . . Overhead expenses at Montgomery Office for 3½ months, $18,093.52."

It is hard to conceive of a more specific finding that the overhead expenses were increased in the amount stated, solely by the delay in question.

Again, under the guise of arguing a principle of law, petitioner on brief (pp. 50-60) attacks the sufficiency of the evidence to support this finding. Having failed to raise this question by an appropriate assignment of error, petitioner is precluded from raising the point on brief[30].

Apparently recognizing that its assignment of error is untenable, petitioner shifts its argument (Br. p. 57) to a contention that there was no proof sufficient to support this finding. While we believe it is clear, from the cases cited, that petitioner is not entitled to be heard on this question, we do desire to point out that petitioner bases its entire argument on a tabulation that was introduced in evidence (P's. Ex. 46-A), ignoring entirely the mass of testimony[31] as to the effect of these delays and interference on

(30) *Gunning v. Cooley*, 281 U. S. 90, 98; *Olson v. United States*, 292 U. S. 246, 262; *Prudence Co. v. Fidelity & Deposit Co.*, 297 U. S. 198, 208.

(31) RII, 11-12, 26-28, 35, 37, 46-49, 226-7, 302-3, 345, 753, 759, P's. Exs. 11 and 11-A.

the central office overhead expenses, and the basis of allocation used.

Even if it were open to petitioner to argue that, as a matter of law, overhead expense may not be considered in measuring damages, its argument on the point is refuted by the overwhelming weight of authority. Judge Hamilton stated succinctly the established rule and its reason in *Grand Trunk Western R. Co.* v. *H. W. Nelson Co.* (CCA 6), 116 F. (2d) 823, 838-839:

> "Determination of damages for breach of a contract is an inexact science and the sum reached by whatever method used will never be more than an approximation. This impossibility of precise determination is generally recognized and the law does not require mathematical certainty. Recognizing the evidential difficulties inherent in fixing damages to inflexible monetary terms, the law adjusts itself to the exigencies of the business world. . . .
>
> "In computing damages for breach of a construction contract, overhead expenses may be considered. These are not definable with precision but may be said to include broadly the continuous expenses of the business, irrespective of the outlay on a particular contract. *McCloskey* v. *United States,* 66 Ct. Cls. 105; *State of Indiana* v. *Feigle,* 204 Ind. 438, 178 N. E. 435. The jury was not required to view appellee's loss as totally separate and apart from its general work. When the present delay resulted, a part of the general expense of appellee's business was incurred in the supervision of the employees and the maintenance of the machinery and equipment on the job here in question and also to the injunction suits which produced the delay."

III

The Forced Construction of Outside Scaffolds Was a Clear Breach of Contract. (Finding 15, Item 2 of Judgment)

The facts concerning this item of Blair's claim appear in the findings (RI, 44-48), summarized at pp. 12-13, *supra*, and need not be repeated here. A more deplorable case of tyrannous and outrageous conduct toward a contractor, in violation of his most fundamental rights, cannot be found in the annals of government contracts. The situation presented is worse than that involved in *Struck Construction Company* v. *United States*, 96 C. Cls. 186, where Judge Madden said (p. 220):

> "Coercion sufficient to avoid a contract need not, of course, consist of physical force or threats of it. Social or economic pressure illegally or immorally applied may be sufficient. Restatement of Contracts, sec. 492, comment g. See *Hartsville Oil Mill* v. *United States*, 271 U. S. 43; *Hazelhurst Oil Mill Co.* v. *United States*, 70 C. Cls. 335.
>
> "A threat made in good faith, to enforce rights which one honestly believes that he has, is not legal coercion, even though those rights are in fact or in law nonexistent. But if one knows that he has not the right which he insists upon, and still by the pressure of his insistence causes another to yield up his rights in order to escape the pressure, that is coercion."

Petitioner does not attack the findings of the Court of Claims, except by indirection, and seeks to avoid responsibility for the damages resulting to Blair on two highly tech-

nical grounds, namely: (1) That Blair is precluded by failure to appeal in writing under Article 15, and (2) because the unscrupulous agents of the Government refused to put their order in writing.

(1) The failure to "appeal."

As already pointed out (*supra*, p. 39), Article 15 applies only to a situation where there is a dispute between the parties as to what is required by the contract. *Penker Construction Co.* v. *United States*, 96 C. Cls. 1. Furthermore, such a provision contemplates a bona fide dispute. As the Court of Claims held in this case (RI, 80):

> "Art. 15 of the contract relating to disputes also clearly contemplated and there was, therefore, an implied agreement that the defendant's designated and authorized representatives, agents, and officers in charge of the work would not interfere with or hinder the contractor in questioning the propriety or correctness of their acts, instructions or requirements during the prosecution of the work and in submitting his protests and objections. Above all, there was clearly implied in such provision an obligation on and undertaking by the defendant not to commit or permit any act intended as punishment of the contractor for so attempting to invoke the contract provision and follow the procedure therein provided so as to obtain a fair and impartial decision of disputes on the basis of a true state of facts and circumstances. *Ripley* v. *United States*, 223 U. S. 695; *Globe Grain & Milling Company* v. *United States*, 70 C. Cls. 595."

There was no dispute here between Blair and the Government's inspector, Feltham, as to what was required by the

contract. Feltham freely conceded that the contract did not require these scaffolds, and for this very reason refused to give a written order for their construction. He had already been overruled by the contracting officer on matters in which Blair had been in a position to appeal, and he and Dodd had exhibited resentment and had embarked upon a deliberate course of punishing Blair in every conceivable and costly way for taking such appeals. Consistent with that course of conduct, when Blair demanded that the order for the scaffolds be put in writing, Feltham refused, well knowing that he would be in a position to deny, if Blair sought a reversal of the oral instructions (as he did deny on the witness stand later[32]) that any such order had been given. In refusing Blair's request that he put this unreasonable demand in writing, he made the same statement that he made on many other occasions of the sort, that while he had no way to require Blair to follow his wishes, "he could and would make" Blair "sorry if he did not do so or make him wish he had" (RI, 47).

When Blair refused to obey, Feltham, solely for the purpose of forcing obedience thereto, exacted over-meticulous and absurd uniformity of work to such an extent that Blair was confronted with a situation impossible to meet and overcome (RI, 47). He did everything within his power when he fully informed the contracting officer of the outrageous conduct of his subordinate and begged for relief (RI, 49, 82). The contracting officer expressed sympathy, but did nothing (RI, 49).

On these facts, the case is clearly distinguishable from the long list of cases cited by petitioner (Br. p. 37). In each of these cases, there was a bona fide dispute as to what was required under the contracts and specifications. In the case of *United States* v. *Callahan Walker Co.*, 317 U. S. 56,

(32) RII, 390-391.

so strongly relied upon by petitioner, this court was careful to point out (p. 59):

> "There are no findings that the contracting officer failed to ascertain the probable cost of the new work or that he did not honestly decide that the contract price would be a fair allowance for the extra work."

Where a contractor reposes upon the good faith or discretion of some public officer representing the Government, there is an implied obligation that the officer will not act arbitrarily or capriciously, but will exercise an independent and honest judgment[33].

The contract in the instant case provided what, on its face, appeared to be a thoroughly adequate machinery for righting wrongs done to the contractor by subordinate officials, but those provisions necessarily implied that Blair's right to invoke the appeal machinery so established would not be impeded, hampered or destroyed, as it was in this case, through bad faith, trickery, deception and punitive action by the Government's agents. In saying that Blair *elected* "to proceed with the construction upon the rulings of subordinate officials" (Br. p. 41), petitioner treats as nonexistent Findings 15, 16 and 20 (RI, 44-51, 70-74). An election involves a choice of course, but Blair had none.

(2) The lack of written "orders."

Petitioner (Br. pp. 43, et seq.) invokes the provisions of Articles 3 and 5 of the contract, which are set out in full in the Appendix to petitioner's brief.

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(33) *United States v. North American Commercial Co.*, 74 Fed. 145, 149; *Phoenix Bridge Co. v. United States*, 85 C. Cls. 603, 629; *Karno-Smith Co. v. United States*, 84 C. Cls. 110, 124; *Sun Shipbuilding Co. v. United States*, 76 C. Cls. 154, 185; *United States v. Buchanan & Crow* (CCA 8), 61 F. (2d.) 821, 825.

Article 3 provides for the situation where the contracting officer finds it desirable to order "changes in the drawings and (or) specifications . . and within the general scope thereof." It clearly contemplates changes which cause an "increase or decrease in the amount due under the contract, or in the time required for performance". The applicability of that article to the item here under discussion does not appear, and petitioner carefully refrains from any demonstration of its relevance, other than the sweeping and misleading statement (Br. p. 43) that a substantial part of the "labor and materials for which the court below allowed recovery . . . were either substitutions for, or additions to, the labor and materials called for by the contract and specifications".

On the contrary, the forced construction of the outside scaffolds involved simply the *method* of doing the work, which added not one jota to the value of the material or labor for which the contract price was fixed. It involved no change in the drawings or specifications, and no extra values which could have been made the basis of an increase in contract price[34]. Like the order given the contractor in *United States* v. *Barlow, supra*, this order constituted "an exercise of unwarrantable superintendence", and therefore a breach of contract entitling Blair to recover his resulting damages.

As to Article 5, covering *charges* for "extra work or material", it obviously contemplates an enlargement of the work covered by the contract, and has no reference to a situation where the contractor is improperly and in bad faith coerced into doing the contract work in a more expensive manner than he had reasonably planned.

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(34) Cf. *Badders v. Davis*, 88 Ala. 367, 6 So. 834; *Lantry Cont. Co. v. A. T. & S. F. R. Co.*, 102 Kan. 799, 172 P. 527.

IV

Damages Representing Increased Costs Due to Unfair, Unreasonable, and Arbitrary Acts and Requirements of Defendant's Supervising Superintendent and Inspector $9,033.21. (Finding 16, Item 3 of Judgment.)

As set out above, this total was made up of (a) Salaries and expense of two extra representatives at Roanoke to handle protests, etc. $4,952.95; (b) Unnecessary bolting of pans $2,620.66; (c) Fine Grading done a second time $1,352.10; (d) Temperature steel improperly required $107.50.

It is clear from the findings of fact that what happened to Blair in this case was that he had the misfortune to offend the Government's supervising superintendent of construction, Feltham, and his assistant, Dodd, by twice appealing from and reversing them in the early part of the work. Blair had planned to use a central concrete mixing plant and also a portable mixer. Feltham and Dodd ruled that he could not use the central mixer. Blair appealed and was sustained. Thereupon, Feltham and Dodd ruled that he could not use the portable mixer. Again Blair appealed and was sustained.

Feltham and Dodd, being thus reversed, entered upon a course of unreasonable conduct toward Blair which is described by the Court of Claims in Finding 20 (RI, 70-71). As will be seen from the findings, Feltham and Dodd, in a spirit of resentment and revenge, made up their minds that there would be no further opportunity for Blair to upset their rulings regardless of how unfair they might be and that Blair would be punished and, if possible, financially ruined for daring to question their rulings. It is quite clear that they did their worst to accomplish that fact, to the final extent of costing Blair $121,180.81, in addition to

the loss caused to Roanoke Marble & Granite Co., Inc., of $9,730.27, a total of $130,911.08, the amount of the judgment. There is no way to know what additional amount Blair lost in untabulated cost and expense not susceptible of factual proof.

This unseemly conduct was in complete violation of the contractual duty of the Government not to interfere with the performance of the contract. It was not a mere lack of cooperation, but positive and active interference and oppression.

That these were the acts of persons whose consciences were overcome by unjustified resentment and anger is clearly shown by the fact that Feltham and Dodd are found by the court below to have resorted to "harsh, profane and abusive language" towards Blair's men. This sort of conduct on the part of the officials designated by the Government to supervise the work was in itself enough to interfere with and disorganize his entire construction program. Nor did Feltham and Dodd stop merely at abusing Blair's officers, but they went even to the length of interfering with and delaying his laborers engaged on reinforcing steel work so as to cause idle time (RI, 62).

Illustrative of the bad faith of these officials is the fact that, after causing Blair the loss of many thousands of dollars while the work was in progress, they afterwards made such false and unfounded charges against him as to almost cause him to lose the award of another contract on which he was low bidder. Fortunately, Blair learned about it, obtained a hearing and completely refuted the false charges and was awarded the contract (RI, 74).

This conduct toward a contractor who, during his thirty-five years of satisfactory government work, had never failed to complete a contract on time was reprehensible and inexcusable. For the insults and discouragement, the untold worry and concern caused by the Government's agents,

no reparation is possible. The least his government can do under the circumstances is to make good his provable financial loss.

It is no answer for government counsel to say that the Government is not liable for the torts of its agents. This is not a tort action. It is a claim for breach of contract and for the "increased costs and expenses" incurred in the performance of the contract as a result of the breach.

True, the resentment and unfriendly feelings of Feltham and Dodd aroused by Blair's successful appeals from their unjust rulings was personal, but their unjust conduct of interference and delay was in their official capacity as the Government's representatives in charge of supervising the work, and for their conduct their principal is liable[35].

Surely if a private owner had let a contract for construction and had an architect employed as his representative to supervise the work and the architect interfered with and delayed the contractor, the owner would be liable[36]. The rules applicable to contracts between private parties apply equally where the Government is a party[37].

Petitioner's defense that Blair is precluded from recovery on these items by his failure to appeal is answered by what has been said (*supra*, pp. 56-58) with reference to the outside scaffolds. As the Court of Claims found, these inspectors admitted they had no right to compel obedience to these unfair orders, and their acts made it impossible for Blair to follow effectively the appeal method prescribed by Article 15 (R1, 49). As the Court of Claims held, these actions constituted a clear breach of contract, which reliev-

(35) Judicial Code Section 145 (1), 28 U.S.C.A. 250 authorizes claims against the Government ". . . founded . . . upon any . . . contract, express or implied, with the government."

(36) Such a case was *Del Genovese v. Third Ave. R. Co.*, 13 App. Div 412, 43 N. Y. 8 (Aff'd. 162 N. Y. 614, 57 N.E. 1108).

(37) See Footnote 4, p. 20, *supra*.

ed Blair of the obligation to comply strictly with the appeal provisions (RI, 76-77).

We submit that the finding that Blair is entitled to recovery is the only possible finding under the circumstances.

V

Plaintiff Is Entitled to Reimbursement for Excess Wages Paid Pursuant to Improper Orders. (Items 4 and 5 of Judgment.)

The facts on these issues are summarized, *supra*, at pages 14-20.

They show a shocking disregard of Blair's rights. The Government's local superintendent, after first acquiescing in the obviously correct interpretation of the contract, reversed his position and gave the contract a meaning thoroughly at variance with its letter and spirit and the intention of the parties at the time it was signed. By misinterpreting the contract and deliberately misleading the Department of Labor, he obtained a letter from a person having no authority to rule on the question, which appeared to sustain his ruling. On appeal to the contracting officer, the latter washed his hands of the responsibility of deciding the controversy until the job was practically finished, when he ruled that Blair's interpretation was correct, but never reimbursed Blair or his subcontractor for excess payments made under the erroneous interpretation.

Petitioner's brief suggests only two defenses to this item of the claim—the same defenses asserted to the claim concerning the outside scaffolds and improper inspection above discussed.

As to the defense that Blair is precluded for failure to appeal to the head of the department, it is obvious that this interpretation by Feltham, and the devious and unfair method of attempting to bolster his position through misrepresentation of the issue, were all a part of the cam-

paign of revenge and punishment described at pp. 60-62, *supra*. The contracting officer at first shirked his duty of deciding this dispute, and when he finally concluded that Feltham's interpretation was wrong, he advised Feltham to that effect, but neither he nor Feltham ever conveyed this decision to Blair or the subcontractor, and the damage done by the prior erroneous interpretation was never repaired.

Thus the contracting officer's decision on the *real* controversy, which was the proper interpretation of the contract, was a favorable decision which, even if it had been communicated to Blair, would not have required an appeal to the head of the department.

Furthermore, the parties obviously did not intend, by Article 15 of the contract, to lodge in one of them the power to construe the contract and to determine whether or not there had been a breach. Long before this contract was executed, it was settled by judicial decisions that such a clause does not give the officer who is to settle "disputes" the final authority to decide, as a matter of law, the proper construction of the contract[38].

It is also a well established principle that a contractor, in agreeing to submit disputes to the decision of a Government representative, is not bound by decisions which are grossly erroneous and acts of bad faith[39]. Nor is it open to the Government to defend on this ground where the Government agent's conduct is "repellant of appeal or of any alternative but submission with its consequences"[40].

The assertion that respondent may not recover on this

(38) *Davis v. United States*, 82 C. Cls. 334, 346-7; *Callahan Construction Co. v. United States*, 91 C. Cls. 538; *Dock Contractor v. New York* (CCA 2), 296 F. 377, 385; *Grace Cont. Co. v. C. & O. N. R. Co.* (CCA 6), 281 F. 904, 906.

(39) *Sweeney v. United States*, 109 U. S. 618; *Ripley v. United States*, 223 U. S. 695.

(40) *United States v. Smith*, 256 U. S. 11, 16.

item because of the provisions of Articles 3 and 5 is answered by what has been said (*supra*, p. 58) concerning the outside scaffolds.

VI

The Court of Claims Has Jurisdiction to Allow Recovery on the Contractor's Claim for the Use of the Roanoke Marble & Granite Company, Inc., the Subcontractor.

The judgment rendered by the Court of Claims includes an award of $9,730.27 on a claim to the use of the Roanoke Marble & Granite Company, Inc., a subcontractor of respondent who furnished the materials and performed the labor necessary to install the tile, terrazzo, marble and soapstone work called for in respondent's contract with the Government. This award is for extra labor costs representing the difference between the intermediate prevailing minimum wage rate paid by the subcontractor for labor of a semi-skilled classification and the minimum of $1.10 an hour which Feltham compelled the subcontractor to pay for the reasons and under the circumstances set forth in the Court's findings (Finding 19; RI, 64-70)[41].

These extra labor costs were unnecessary and not required by the contract, and were incurred and paid by the subcontractor to comply with the rulings and decisions of Feltham, which the Court below held were so unreasonable, arbitrary and capricious as to make it difficult or im-

(41) Finding 19 is supported by the testimony of witnesses who appeared and testified before the Commissioner of the Court of Claims and whose direct testimony was subjected to most rigid cross examination by Government counsel. That ruling was made by Government Inspector Dodd in the first instance to the subcontractor's foreman, Mr. Godbey, and again to the subcontractor's president, Mr. Wilson, and the respondent's superintendent, Mr. C. W. Roberts, in the presence of Mr. Godbey and Mr. Knox, the timekeeper, at Mr. Dodd's office (RII, 239, 250-251, 259, 281, 575, 576-577, 583-589, 590, 600, 646).

possible for the contractor and this subcontractor to literally comply with the provisions in the contract, and the Court further held that such acts and conduct on the part of Feltham were so arbitrary, capricious or unauthorized and so grossly erroneous as to imply bad faith and amount to a breach of the contract and constituted a waiver of strict compliance by the other party, the contractor (RI, 76-77).

The Government has not reimbursed Blair for the excess labor costs, and consequently Blair has not paid the subcontractor for such costs.

Both Blair and the subcontractor protested to Feltham and to the contracting officer against the arbitrary and capricious rulings prescribing the classification of labor employed on the work, but they complied with the instructions and orders given and continued the work to completion thereunder (RI, 66). Blair's general contract with the Government specifically required that any and all subcontractors should comply with the specifications as to minimum wages to be paid to skilled and unskilled labor on all work under the said contract (RI, 65). The performance of the extra work and the expenditure of extra labor costs by the subcontractor under the conditions imposed by the Government's supervising superintendent of construction as to classification and employment of labor was entirely outside of the subcontract, for which the respondent is liable to reimburse the subcontractor the amount of any loss incurred under the principle established by this Court in *Guerini Stone Co.* v. *Carlin Construction Co.*, 240 U. S. 264, 272, 279 (reviewed again in 248 U. S. 334, 340), where this Court held that the general contractor was liable to reimburse the subcontractor for losses attributable to delays caused by the Government, the owner of the property.

Blair alleged and set forth the facts in his petition with reference to the subcontract executed with the Roanoke

Marble & Granite Company, Inc., and the performance of that contract, and specifically alleged that the said claim was for the use of the said subcontractor, all of which implied that Blair was under obligation to pay to the subcontractor any amount recovered on its behalf. The fact that Blair included in this suit the claim of the subcontractor for its use and benefit is evidence in itself that Blair is liable to the subcontractor for any and all losses incurred and paid on account of excess labor costs to the extent that such losses are established and recovery had upon the claim in this proceeding.

For more than fifty years it has been the settled doctrine of the Court of Claims that a contractor could bring suit for himself and his subcontractor for losses occasioned by the acts of the United States before payment was made to the subcontractor. That procedure is founded upon the common law practice that a suit may be brought in the name of the party in whom vests the legal title to the use of the real and substantial owner under the equitable doctrine of subrogation. *Hall et al* v. *The Nashville & Chattanooga RR. Co.*, 80 U. S. (13 Wall) 367, 373, which was first applied by the Court of Claims in *Jackson* v. *United States*, 1 C. Cls. 260, the history of which is outlined in the decision of that Court in *American Tobacco Co.* v. *United States*, 32 C. Cls. 207, at p. 222, affirmed by this Court in 166 U. S. 468, 41 L. ed. 1081. In that case, this Court held that suit was properly brought in the name of the insured for use of the insurers, but the cause of action rested on the rights of the owner. See also *Phoenix Ins. Co.* v. *Erie & W. Transportation Co.*, 117 U. S. 312, 321.

A contractor has a right to make subcontracts; in the nature of this work he must make subcontracts for specialized work. He must not attempt to transfer his responsibility to the Government, but he has a right to fulfill his

contract duties in the business manner which best pleases him, provided he retains his personal responsibility and achieves the required result. *Stout, Hall and Bangs* v. *United States*, 27 C. Cls. 385.

Section 145 of the Judicial Code confers jurisdiction upon the Court of Claims to hear and determine claims against the United States founded upon any contract, express or implied, with the Government of the United States, "*in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable.*" (28 U. S. C. A. 250.)

This Court itself invoked the equitable doctrine of subrogation and reversed and remanded for further proceedings a decision of the Court of Claims in *Hunt, Exec. of the Est. of Weighel, dec.* v. *United States*, 257 U. S. 125 (55 C. Cls. 77), a proceeding instituted by a contractor to recover compensation for extra services performed by a subcontractor, the real beneficial owner thereof. That was a case in which this Court held that a contractor for mail service may recover from the United States the value of extra service, not within the contract, rendered pursuant to the demand of the Postmaster General, although such extra service as well as the service under the original contract was performed by a subcontractor, where the Government, while recognizing the subcontractor as such, did not have, and did not by implication recognize, any contractual relations with him. The court below entered judgment for the contractor on the mandate of the Supreme Court in the sum of $52,327.60, the exact amount originally claimed, and the money was appropriated for that judgment.

The Court's findings in this case are sufficient to show that Blair is under obligation to reimburse the subcontractor on this claim to the extent of any amount of loss proven and recovered. The facts were clearly stated in the pe-

tition. The subcontracts were attached to the petition and were offered and received in evidence (R1, 10-11, 24-29). All of the evidence submitted in support of the subcontractor's claim was offered by plaintiff in its behalf, and counsel for the subcontractor was associated and took an active part in the proceedings below.

The subcontractor entered into an agreement (Pl. Ex. 62) to comply with all the requirements of the general contract and agreed that the said general contract of Blair should be added to and become a part of said subcontract, in accordance with Government regulations (Bulletin No. 51, Pl. Ex. 38), especially as to use of domestic materials, compliance with N. R. A., employment of labor and breach of contract[42].

The Court in its findings, (R1, 65), found as facts that the subcontractor's contract provided that the subcontractor would comply with all the requirements of Blair's contract insofar as it related to the work covered

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(42) See Circular Letter No. 43, July 6, 1934, printed at pp. 14-15 in Bulletin 51 (Pl. Ex. 38). The following provisions of Blair's contract (P's. Ex. 2) are specifically made applicable to the subcontractor: Article 7—Use of Domestic Materials by Subcontractors; Compliance with N. R. A.; Article II—Requirement of Subcontractor to comply with 8 hour labor law; Article 15(e) providing that the contracting officer may withhold the difference between the rate of wages required by this contract to be paid to laborers and mechanics and the rate of wages actually paid by the contractor and subcontractor to such laborers and mechanics; Article 18 specifying the minimum wages to be paid to skilled and unskilled labor by the contractor and subcontractors; Article 22—Persons entitled to benefits of labor provisions; Article 24—Reports to the contracting officer of employees of subcontractors as well as of the contractor; Article 25—Termination and breach of the contract for violation by the subcontractor of any of the provisions of Articles 7, 11, 18-24, 26; and Article 26 providing that the contractor shall cause appropriate provision to be inserted in all subcontracts to assure the fulfillment of the principal contract.

by the subcontract; and that neither Blair nor the subcontractor had been reimbursed or paid by the Government for any portion of the excess and extra labor costs incurred and paid by the subcontractor.

Furthermore, the Court in its opinion (RI, 90) held that the claim as established by proof is $9,730.27; that it represents the difference between the intermediate minimum wage rate paid by Blair's subcontractor for labor of semi-skilled classification and the minimum of $1.10 an hour which the Government compelled the subcontractor to pay for such semi-skilled labor on the same grounds and for the same reasons as set forth under contractor's claim for Item 4; and the Court in its findings (RI, 89) held as a fact and conclusion of law that, "The action, for which defendant (Government) is responsible, as to the manner in which the labor classification question was disposed of and enforced, was arbitrary, capricious, and so grossly erroneous as to imply bad faith." The Court also found as a fact that the said excess labor costs were incurred by the subcontractor as a result of defendant's (Government's) rulings and requirements with reference to the classification of wages to be paid for workmen employed by respondent's subcontractor (RI, 70).

No issue was raised by the Government in the court below with reference to the obligation of Blair to pay the subcontractor the amount claimed in its behalf. All the facts and circumstances with reference to the nature and extent of the claim and the beneficial ownership thereof were alleged in the petition, submitted as evidence and found as facts by the Court in the proceedings below; and because of the long established practice of the Court of Claims in permitting contractors to sue and recover to the use and benefit of subcontractors for losses sustained because of delays and excess costs occasioned by the Government's breach of the provisions in the general contract, it was not

considered necessary for the court to make a special finding on the point urged by the Government in this proceeding.

Even if there were no findings in this regard, it follows as a matter of law that any judgment collected by Blair by reason of the additional labor costs incurred and paid by the subcontractor under the circumstances herein set forth would be impressed with a trust in favor of the subcontractor.

The rules provide for the Court of Claims to make special findings when requested. Neither party requested a special finding on this point. Blair relied upon the long and established procedure of the Court. The Government acquiesced in the procedure and made no issue of the point in the court below.

The absence of a finding of fact does not require a reversal of the judgment if the circumstances and facts as found are such that the ultimate fact follows from them as a necessary inference. *Winton* v. *Amos*, 255 U. S. 373, 395; *United States* v. *Pugh*, 99 U. S. (9 Otto) 265, 269; *Botany Worsted Mills* v. *United States*, 278 U. S. 282, 290; *United States* v. *Wells*, 283 U. S. 102, 120. In the *Botany Worsted Mills* case this Court, in passing on a question as to whether certain payments to directors were "ordinary and necessary expenses" within the meaning of the Revenue statute, held that the findings *raise a strong inference* that the unusual and extraordinary amounts paid to the directors were not in fact compensation for their services, even though there was not a special finding of fact on that particular point. In the *Pugh* case, the ultimate fact to be determined was whether the proceeds of sale of the captured property belonging to the claimant had been paid into the Treasury, and this Court held that notwithstanding there was no direct proof to that effect it was shown by inference from circumstantial facts established by evi-

dence which were set forth in the findings upon which judgment was rendered, and that if there was any evidence to the contrary, the burden was cast upon the United States to produce it. In the *Wells* case this Court affirmed the decision of the Court of Claims and held that the transfers were not in contemplation of death, stating there was "*no ground for a reversal of the judgment merely because of an inaccuracy in the general statement as to the meaning of the statutory phrase.*"

The Government in its brief attempts to distinguish the case of *Leary Construction Co.*, 63 C. Cls. 206, in which there existed in writing a contractual liability of the contractor with the subcontractor in the terms and under the conditions of the general contract with the Government, and while that agreement was in writing it amounted to no more in law or equity than a subrogation of rights as in the present case. That case involved a contract wherein the Government agreed to pay the contractor one-half of certain wage increases. The contractor made the same agreement with a subcontractor, *adding the proviso that there would be no liability to pay if the Government made no such allowance.* The Court of Claims allowed recovery to the contractor without showing that he had discharged his indebtedness to the subcontractor.

The situation is no different in principle in the present case. Blair here by suing to the use and benefit of the subcontractor has admitted the liability, but limited that liability as in the *Leary* case to the amount that he may recover on this claim. Upon payment by the Government to Blair, he becomes a trustee of the fund for the subcontractor.

The case of *Penn Bridge Co.* v. *United States*, 71 C. Cls. 273, cited by the Government in support of its argument, is not in point because (1) in that case the Penn Bridge Company, the contractor, brought suit in its own name,

and not for the use or benefit of the subcontractor, (2) there was no evidence of any subcontract, (3) there was no evidence to show that the subcontractor paid any increased wages, and (4) there was no evidence to show that the contractor agreed to pay the subcontractor anything. The Penn Bridge Company was the contractor to furnish certain machinery at Navy Yards for a fixed price when erected, and the specifications provided an additional sum after date of contract in event the prevailing wages in the vicinity should be increased. Some of the work involved fabrication and part of the erection was done by a subcontractor. The work was completed and there were wage increases in the vicinity, but the contractor was denied recovery for any claim of the subcontractor for the reasons stated above.

The decision of the Court of Claims in *Severin* v. *United States,* 99 C. Cls. 435, denying recovery of losses suffered by a subcontractor on account of delays in delivery of models by the Government, was based upon a specific provision in the subcontract whereby the contractor was protected from liability for damages to the subcontractor for delays caused by the owner. The contractor, Severin, did not allege in his petition that he sued to the use or for the benefit of the subcontractor, although the Court found as a fact that "plaintiffs acknowledge themselves indebted to the subcontractor in the event that payment for the loss is adjudged an obligation in the first instance of the defendant." (Finding 4) Nevertheless, if the parties therein were in agreement as to their respective liabilities and obligations to each other under the said subcontract, the Government had no right to interfere or question the rights of the parties. *Leary Construction Co., supra,* p. 223. The claim should be allowed under the rule laid down by this Court in *Hunt, Exec.* v. *United States, supra.*

The provisions of Sec. 3477 R. S. (31 U. S. C. A. 203),

prohibiting the assignment of claims against the Government, have no application to this case. That statute relates to voluntary assignments and does not extend to transfers by operation of law or interfere with the equitable doctrine of subrogation. *American Tobacco Co. to the use of Certain Insurance Companies* v. *United States*, 32 C. Cls. 207, aff'd 166 U. S. 468.

Justice Whaley, in his dissenting opinion in *Severin et al* v. *United States, supra*, states very clearly the basic reasons for the application of the doctrine of equitable subrogation to suits instituted by a general contractor to the use of subcontractors, and calls attention to the fact that the majoriy opinion cites no case in the Supreme Court in which subcontractors have been held to be assignors of claims against the United States merely because they were unfortunate enough to be subcontractors.

This Court in *Martin* v. *National Surety Co.*, 300 U. S. 588, 594, reviewed the decisions interpreting the provisions of Sec. 3477 R. S. (31 U. S. C. A. 203), prohibiting the assignment of claims, and held that it did not apply to a transaction between a principal and surety on a bond. In that case a contractor made an *assignment* of all *deferred payments* and *retained percentages* due on a Government contract to a surety in further consideration of a bond executed by the surety to guarantee payment of persons supplying labor and material in the prosecution of the work, and *this Court held the assignment valid*, pointing out that the surety was not seeking to keep the money itself, that on the contrary the surety was devoting the full proceeds of the assignment to *the satisfaction of the liability covered by the bond, an equity worthy of recognition.* In the decision in that case Justice Cardozo refers to the decisions of this Court in *Spofford* v. *Kirk*, 97 U. S. (7 Otto) 484, and *Nat. Bank of Com.* v. *Downie*, 218 U. S. 345 (cited by the Government in its brief herein, p. 65) as "the advocates

of literalism" and compares them to a long line of cases that exhibit an opposing tendency (cited in the opinion) which, as Justice Cardozo says, teach us that the statute must be interpreted in the light of its purpose to give protection to the Government, and states that to the extent that the two lines of cases are in conflict the second must be held to be supported by the better reason, and that,

> "Far from defeating or prejudicing the interests of the Government the recognition of the equities growing out of the relation between the contractor and the surety will tend, as already has been suggested, to make those interests prevail. Cf. Equitable Surety Co. v. United States, 234 U. S. 448, 456 . . . ."

The construction of Sec. 3477 R. S. by Justice Cardozo in the foregoing case as applied to a transaction between a contractor and a surety in satisfaction of a liability covered by a bond, applies equally well to a transaction between a contractor and subcontractor in satisfaction of a liability for work performed on a Government contract.

The Government in its brief contends that a rule excluding from the Court of Claims a claim by a contractor in behalf of a subcontractor causes no inequity, since the subcontractor can protect himself by making suitable provision in the subcontract. It would seem to respondent that the established procedure permitting contractors to sue to the use of subcontractors, that has been in common practice for over fifty years, is such an integral part of the Governmental contract procedure that any change now made without according relief to present claimants and pending subcontracts would create the greatest inequity to untold numbers of subcontractors, especially at this time when so many thousands of subcontractors are operating

under subcontracts for manufacture and production of war materials and supplies for the Armed Forces in the present war. The effect of the Government's argument on this point is to relieve the Government absolutely from any and all liability for extra work performed by a subcontractor under a general contract which, to say the least, would be a very inequitable precedent and ultimately react to the prejudice of the Government on all future contracts.

The Court below has found that the subcontractor was required to expend $9,730.27 in excess of what the reasonable cost would have been had the subcontractor been permitted to use semi-skilled labor, which the Government admits. Thus the damage to the subcontractor is conceded. The subcontractor is foreclosed by statute from instituting suit in its own behalf for lack of privity of contract. Since privity of contract is indispensable to jurisdiction in such cases, the respondent was the only party who could maintain suit in the Court below. To sustain the petitioner's view would relieve the Government of the necessity of responding in damages to *anybody* notwithstanding its culpability. The petitioner in its brief refers to this situation as "an instance of the *damnum absque injuria* resulting from the sovereign immunity of the United States" (Br. p. 67). It might more aptly be referred to as unconscionable, which is never sanctioned even on the part of the Government. *Bull* v. *United States*, 295 U. S. 247, 260, 261.

If this Court should require a specific finding of the Court of Claims on the question of whether or not Blair is obligated to reimburse the subcontractor the amount now claimed on its behalf, then we ask that the Court direct the case be remanded to the Court of Claims for further proceedings and a finding of fact on that point.

CONCLUSION

We feel that we have demonstrated the soundness of the principles of law herein discussed. These principles of law are not new. They have many times stood the test of reexamination by the courts. Not only are they founded upon considerations of justice and fairness between individuals, but they comport fully with a sound public policy.

When Blair prepared the estimates on which he based his bid for this work, he assumed that the Government would cooperate with him; that it would not interfere with or delay him, and would not permit the mechanical contractor to do so; that its representatives would deal fairly and honestly with him, would decide in good faith any differences or disputes that might arise between the parties, and, above all, would not interfere with or destroy his right of appeal in such matters through trickery and coercion; and that he would be permitted to use construction methods which were customary and reasonable, if the employment of such methods would produce the work required under the contract.

He had the right to assume these things, not only because of specific contract provisions, but because of the established principles of law governing construction contracts.

Presumably his competitors proceeded on the same assumption, as the next bid exceeded Blair's bid by less than 2 per cent (Stipulation No. 1, original on file in this case).

If the decision below is reversed by this Court, it will serve as notice to building contractors that they may not in future rely upon such assumptions, but must be prepared to suffer losses resulting from interferences and unfair treatment by representatives of their Government. It cannot be doubted that such a reversal of established prin-

ciples of contract law would cost the Government many, many times the amount involved in this case, in that it would be a warning to prospective bidders that, in estimating their costs and bids on Government construction, they must be prepared to absorb such losses and expenses. If the Government is to have that privilege, it must pay for it; if on the other hand, as Mr. Justice Murphy said in *United States* v. *Brooks-Callaway Co., supra,* "contractors know they are not to be penalized for unexpected impediments to prompt performance," the Government will benefit from the elimination of such hazards from bids submitted.

We submit that the decision below is right and should be affirmed.

H. CECIL KILPATRICK,
FRED S. BALL, JR.,
Attorneys for Respondent.

RICHARD S. DOYLE,
MILLS & KILPATRICK,
Of Counsel.

APPENDIX

The following letters and telegrams appear in Plaintiff's Exhibits 27 (correspondence between Algernon Blair and the contracting officer), 28 (correspondence between Algernon Blair and Redmon Heating Company), and 42 (correspondence between the contracting officer and Redmon Heating Company). References in parentheses preceding each letter or telegram are to exhibit number and sheet number in the exhibit. E. g., the reference "27-1" means that the letter appears as the first sheet in Exhibit 27. (Emphasis supplied)

(27—1)

December 21, 1933

The Construction Service,
Veterans Administration,
Washington, D. C.
Sir:

In accordance with the request contained in your letter HAB of the 19th inst., I am returning herewith signed certificate showing that we received on this date (December 21st) your notation to proceed under our contract for construction of buildings and utilities at Veterans Administration Facility, Roanoke, Virginia.

We already have a representative at the site doing preliminary work, laying out, etc., and our Superintendent will arrive to start active construction work on the 27th inst., which will be four days prior to the expiration of the ten day limit within which we agreed to start.

The receipt is acknowledged of our copy of the contract for the above mentioned work, which is being made a part of our permanent file.

Respectfully,
ALGERNON BLAIR
By: (Signed) John T. Clarke

JTC:EG
CC: Job
CC:WBO
Encls.

(28—1)

January 22, 1934

Redmon Heating Company,
Louisville, Ky.

Gentlemen:

I am sending you herewith in separate compartment two prints each of Virginia Bridge and Iron Company's drawings E-1 to E-6, inclusive, showing the general layout of the structural steel for Boiler House, Building No. 13, at Veterans Administration Facility, Roanoke, Virginia.

On one of these sets of prints there are a number of dimensions left blank and circled in red. We cannot determine these from the contract drawings, as they are wholly dependent upon equipment being furnished by you for this building.

Please fill in these questioned dimensions and send a set direct to Virginia Bridge & Iron Company, at Roanoke, Virginia, as quickly as possible.

We want to start foundation work on this building either the latter part of this week or the first part of next week It will, therefore, be only a very short time until it is necessary that the structural steel be erected. It cannot be fabricated until we have the information called for on these accompanying drawings. Please bear this in mind, and have your manufacturers determine this data for us without delay.

Yours very truly,
ALGERNON BLAIR
By:

EFH:ML
CC:Job
CC:Va. Bridge & Iron Co.

Virginia Bridge & Iron Co:—Please be very sure that the set of prints these people send you showing the desired date is carefully preserved. It may be that some of the equipment will not fit. Therefore, I want us to be in the clear as to the responsibility for error.

(28—2)

REDMON HEATING COMPANY
124 North Fourth Street
Louisville, Kentucky

January 23, 1934

Mr. Algernon Blair,
Montgomery, Ala.

Dear Sir:

RE: ROANOKE VETERANS' HOSPITAL
Your letter January 22d.

The Veterans' Administration has not returned nor commented on our list of proposed materials and manufacturers. As soon as same is established we will obtain the dimensions requested and forward as directed.

We will appreciate it if you can *send us your progress schedule* for the entire job, some idea of your progress to date on each building and any other information you have which might assist in *co-operating with you.*

Yours very truly,
REDMON HEATING COMPANY
By—James T. White

JTW:EMK
cc—to Va. Bridge & Iron Co.
Roanoke, Va.

(28—3)

Jan. 24, 1934

Redmon Heating Company,
124 North Fourth Street,
Louisville, Kentucky.

Gentlemen:

I wish to thank you for your letter of the 23rd instant, advising that you will give us the dimensions we requested as soon as you have secured approval from the Veterans Administration of the equipment which you have submitted for Roanoke Veterans Hospital.

We have not worked up any actual schedule of progress as yet. We have, however, completed the general excavation for the four buildings in the Service Group and are preparing to pour concrete as soon as we can secure approval of the samples of materials. Probably *by the middle of next week*, we will be pouring concrete in these four buildings.

We are also working on the excavation for Main Building No. 2 and for Building No. 7, and the others will follow as rapidly as possible.

I think it quite likely that within three or four months we will have the Boiler House and the other buildings in the Service Group practically completed, certainly to the point where you can begin the installation of your equipment in the Boiler House.

We have let a contract to M. W. Kellogg Company of New York for the construction complete of the stack, and I am sure that they will be glad to rush this part of the work to completion very quickly.

We expect to carry on our entire building program with considerable speed and hope to have all buildings completed by November 1st.

Our superintendent in charge of this work is Mr. C. W.

Roberts, and the actual planning of the work is being left largely in his hands. You can address him care Algernon Blair, P. O. Box 551, Salem, Virginia, and I suggest that you keep in touch with him so as to keep informed as to our progress and our plans.

Yours very truly,
ALGERNON BLAIR
By (Signed) J T C

JTC-bcd
CC:Job

(42—25)

Roanoke, Virginia
Redmon Heating Company
VAc-425

VETERANS ADMINISTRATION FACILITY
Roanoke, Virginia, January 25, 1934

Director of Construction
Veterans Administration
Arlington Building
Washington, D. C.

Sir:

It is requested that the above mentioned contractor, Redmon Heating Company, be *directed to have their representative report on the site at an early date.*

The general contractor, Algernon Blair, VAc-424, now has the excavation for the Boiler House, Utility Buildings, Storehouse, Garage and Attendants' Quarters, nearly completed. The writer was advised by the general contractor on this date that his intention is to place the concrete immediately after receipt of approval of concrete material, which is now pending in Central office.

As the Mechanical contractor has a large amount of sleeves for installation which specification requires that he

locate, it is necessary that his representative be on the site prior to the placing of the concrete.

Respectfully
P. M. FELTHAM
Supvg. Supt. of Construction
By THOMAS G. DODD
Thomas G. Dodd
Asst. Supt. of Construction

TGD/de

(42—30)

ROANOKE, VIRGINIA
Rednon Heating Company
VAc-425
FACILITY
Roanoke, Virginia, January 29, 1934
HAB
Project F. P. 18.

Director of Construction
Veterans Administration
Arlington Building
Washington, D. C.
Attn: Construction Service

Sir:

Reference is made to your letter of December 19th, 1933, regarding P. W. A. Report on number of men employed on above contract as of Monday of each week, as well as work performed up to previous Saturday, including value of the work.

Would advise that up to this date neither the contractor nor any of his employees have reported on the site, and the

value of the work done under this contract is zero.

Respectfully
P. M. F.
P. M. FELTHAM
Supvg. Supt. of Construction.

PMF/de

(42—33)

Roanoke, Virginia
Redmon Heating Company
VAc-425
February 6, 1934
HAB DEC/srb

Redmon Heating Company
124 North Fourth Street
Louisville, Kentucky

Sirs:

Under date of January 27th, you were advised that the general contractor for construction at above mentioned station had started excavation for the Boiler House, Utility Buildings, Storehouse, Garage and Attendants Quarters, and that such excavation was nearly completed. You were also advised that it was the intent of the general contractor to start pouring concrete immediately after the approval of concrete materials, and that these materials were approved on January 25th.

Under date of February 3rd, the Supervising Superintendent of Construction reported that you had no representative on the site, and your attention is again invited to the matter, in order that your representative may *report to the job within the near future.*

Your attention is also invited to the fact that the cost schedule, including all items covered by the original contract and Change Order "A" dated January 30th, must be

prepared at an early date, in accordance with instructions forwarded you on December 8th, and transmitted to this through the Supervising Superintendent of Construction, for approval. No payment will be made in connection with your contract until after such schedule has been approved.

For the Director
SIGNED
J. ERNEST PRICE
Chief, Administrative Division
Construction Service

cc to SC

(42—34)

Roanoke, Virginia
Redmon Heating Company
VAc-425

VETERANS ADMINISTRATION FACILITY
Roanoke, Virginia, February 7, 1934

Director of Construction
Veterans Administration
Washington, D. C.
Sir:

Further reference is made to Contract Vac-425, with the Redmon Heating Company, for the installation of heating, plumbing and electric work at Veterans Administration Facility at Roanoke, Va.

You are further advised that this contract *has no representation on the station at this date.*

Yours very truly
P. M. FELTHAM
Supvg. Supt. of Construction
by THOMAS G. DODD
Thomas G. Dodd
Asst. Supt. of Construction

PMF/dew

(42—35)

Roanoke, Virginia
Redman Heating Company
VAc-425
February 9, 1934
HAB DEC/srb

Redmon Heating Company
124 North Fourth Street
Louisville, Kentucky
Sirs:

Under date of February 7th, the Supervising Superintendent of Construction again invited attention to the fact that *you have no representative on the job.* This matter was invited to your attention in letters of January 27th and February 6th, and you are advised that *prompt action is required on your part* in sending a representative to the station, *in order to avoid causing delay to the general contractor* in placing sleeves, etc., and your cooperation in connection with this matter is requested.

Under date of December 16th, your attention was invited to Article 1, as amended on page A7P-1 of the specifications relative to outside sewer system. You were also advised relative to Article 9, Page 7P-3 of the specifications relative to obtaining permits. This advice was with particular reference to the 24 inch cast iron sewer pipe under Norfolk and Western Railroad right-of-way to outfall block at Roanoke River, as shown on contract drawing No. 6. You were requested to advise this office promptly, showing whether you have or have not been able to make satisfactory arrangements with the railroad company relative to this matter, in order that further action could be taken by this office if necessary. If the action suggested has not been taken by you, the matter should receive your immediate at-

tention, in order that this office may be properly advised.

For the Director
SIGNED
J. ERNEST PRICE
Chief, Administrative Division
Construction Service

cc to SC

(42—36)

Roanoke, Virginia
Redmon Heating Company
VAc-425
FACILITY
Roanoke, Virginia, February 15, 1934

Redmon Heating Company
Louisville
Kentucky

Gentlemen:

Reference is made to your contract with the Veterans' Administration Facility, Roanoke, Virginia.

Your attention is invited to the following Articles of the General Specifications, which forms a part of your contract:

See Page A-13-H-1 for footings, excavation, etc for boilers.
See page A-13 H-9 for boiler foundations.
See Page A-14-H-3 for pump foundations.
See page A-14-H-8 for blow off sump.
See page 14-H A-1 for stoker foundations.
See page 14-H B-1 for fuel burning equipment.
See page 14-H C-1 for coal and ash handling equipment.
See page 14-H C-2 for concrete walks and hopper
See page 14-H C-8 for ash storage tank

See page 14-H D-5 for concrete work and trench covers.

Due to the amount of concrete construction involved in the above mentioned articles, you are requested to *have your Superintendent report on the site at the earliest possible date,* as the general contractor has notified this office of his intention to proceed with the general construction at an early date; and *the nature of your concrete construction is such that you should be prepared to perform same as the contractor proceeds with his general construction.*

Yours truly
P. M. FELTHAM
Supvg. Supt of Construction

(42—38)

Roanoke, Virginia
Redmon Heating Company
VAc-425

VETERANS ADMINISTRATION FACILITY
Roanoke, Virginia, February 20, 1934

Director of Construction
Veterans' Administration
Washington, D. C.

Sir:

Reference is made to your letter of December 19, 1933, regarding P. W. A. Report on number of men employed on above contract as of Monday of each week, as well as work performed up to previous Saturday, including value of the work.

Would advise that up to this date neither the contractor's representative nor any of his employees have reported

on the site, and the *value of the work done under this contract is zero.*

Respectfully,
By Direction—THOS. G. DODD
Superintendent of Construction

D/1

(42—39)

Roanoke, Virginia
Redmon Heating Company
VAc O 425

VETERANS ADMINISTRATION FACILITY
Roanoke, Virginia, February 27, 1934

Director of Construction
Veterans Administration
Washington, D. C.
Sir:

Reference is made to your letter of December 19, 1933, regarding P. W. A. Report on number of men employed on above contract as of Monday of each week, as well as work performed up to previous Saturday, including value of the work.

Would advise that up to this date neither the contractor's representative nor any of his employees have reported on the site, and the *value of the work done under this contract is zero.*

Respectfully
P. M. FELTHAM
Supvg. Supt. of Construction

(42—41)

Roanoke, Virginia
Algernon Blair
VAc-424

VETERANS ADMINISTRATION FACILITY
Roanoke, Virginia, March 5, 1934

Director of Construction
Veterans Administration
Washington, D. C.

Sir:

Transmitted herewith are progress photographs submitted under the above noted contract, as taken March 1, 1934, to show conditions of work for the period ending February 28, 1934.

You will note that the submission covers twenty-eight (28) paragraphs, being two views each of Buildings Nos. 1, 2, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 23.

Since *no work has been accomplished under the mechanical contracts,* no photographs thereof are included.

Respectfully
W. R. JOHNSTON
Acting Supt. of Construction

WRJ/mi
Encls.

(42—42)

Roanoke, Virginia
Redmon Heating Company
VAv-425
March 5, 1934
HAB DEC/srb

Redmon Heating Company
124 North Fourth Street
Lexington, Kentucky

Sirs:

Under date of March 2nd, the Supervising Superintendent of Construction at above mentioned station forwarded a copy of your telegram of February 19th, in which you re-

ported to him that your representative was scheduled to reach Roanoke on March 1st.

The work in connection with general construction is progressing in such a manner that *it is imperative that your representaçive arrive at the station without further delay,* and you are instructed to acknowledge receipt of this letter and report exact date he will arrive at the station.

For the Director
J. ERNEST PRICE
Chief, Administration Division
Construction Service

cc to SC

(42-45 and 46)

Roanoke, Virginia
Redmon Heating Company
VAc-425

VETERANS ADMINISTRATION FACILITY
Roanoke, Virginia, March 10, 1934

Director of Construction
Veterans Administration
Washington, D. C.

Sir:

This is to advise that as of this date *no representative of the Redmon Heating Company has as yet arrived in Roanoke.*

The contractor for general construction will start pouring concrete for footings on Monday. These footings will be started in the Utility Group of Boiler House No. 13, and it is the intention of such contractor to push the concrete work on this group to early completion.

Because of the concrete work under the Redmon contract in connection with coal handling equipment, incinerator, and boiler foundations, *it is essential that a representative*

of the Redmon Company be sent here at once. Because of the relation of the footings under the general construction contract and of footings required as above mentioned under the mechanical contract, it will be impossible to obtain proper tie-ins unless certain of the concrete under each of these contracts is poured at the same time. In the event that Redmon elects to pour his own concrete, delay will result pending the approval of aggregates and the set-up of his plan. Should he arrange to sub-contract for this work with the general contractor, it will greatly relieve the situation, but arrangements to this end must be effected at once.

This office is today in receipt of a carbon copy of letter of March 9, 1934, from Central Office to the Redmon Heating Company, requesting additional information prior to approval of coal handling equipment. In this connection your attention is invited to the fact that the depth of pit for the coal conveyor equipment is definitely limited by the contract requirements for the footings of column at the southwest corner of the Bolier House, and in the event that the equipment finally approved necessitates a deeper pit, than indicated by the contract drawings, the Redmon Company will be put to considerable expense in tearing out this footing. Other instances of similar conditions might be cited.

It is the intent of the general contractor when concrete operations are under way, to push same under five gangs at different locations, and there is no question but that the work will be seriously delayed unless the Redmon Company makes immediate preparation for furnishing and locating the sleeves.

The record indicates that the necessity for a representative of the Redmon Company to be at the site was called to the attention of Central Office by letters from this office under dated of January 25th and February 7th; and by let-

ters direct to the contractor from this office under dates of February 15th, 19th (telegram) and 22nd. It is the understanding of this office that *the general contractor has been unable to obtain replies from the Redmon Company* in connection with the coordination of steel work for the Boiler House and that he has contemplated making a claim for delay because of this fact.

In line with the foregoing facts, *this office cannot urge too strongly the necessity for the immediate presence of a representative of the Redmon Company and the initiation of work under their contract;* and requests that Central Office take such immediate proper action as will effect the result desired.

Respectfully

W. R. JOHNSTON
Acting Supt of Construction

(42—49)

Roanoke, Virginia
Redmon Heating Company,
VAc-425

VETERANS ADMINISTRATION FACILITY

Roanoke, Virginia, March 12, 1934

Director of Construction
Veterans Administration
Washington, D. C.

Sir:

Transmitted herewith is carbon copy of Volume of Employment Report on Form BLS-742 under date of February 26, 1934, as just received by this office from the Redmon Heating Company.

It will be noted that the contractor his filled in the report

with the statement, "*Job not started*"; and has reported *no materials purchased and no sub-contracts let.*

Respectfully
W. R. JOHNSTON
Acting Supt. of Construction

WRJ/mi
Encl.

(42—51 and 52)

Roanoke, Virginia
Redmon Heating Company
VAc-425
March 13, 1934
HAB DEC/srb

Redman Heating Company
124 North Fourth Street,
Louisville, Kentucky

Sirs:

Under date of December 6th, you were advised that item No. 2, with alternates (f), (g) and (h) of your proposal of December 1, 1933, for work at above mentioned station was accepted. Change order "A" was issued January 30, 1934, accepting alternates (a), (b), (c), (c-a) and (c-c) under Item No. 2, and installation of boiler No. 3 previously omitted. Your original contract was in the amount of $300,000.00, and Change Order "A" was an addition of $82,600.00, or a total of $382,600.00.

Your contract provides that all work covered thereby will be completed at a date not later than that provided in the contract for "General Construction", also that certain buildings are to be completed thirty and sixty days prior thereto. On December 29th, you were fully advised as to completion dates. In this letter you were informed that it was presumed that you would contact Algernon Blair at an

early date, relative to his proposed schedule, in order that your representative would report at the station at the proper time to start operations.

On January 27th, you were advised that the contractor for general construction had started excavation, and expected to start pouring concrete immediately after approval of concrete materials. You were requested to have your representative report at the station in the near future, in order to locate sleeves in accordance with the requirements of your contract. You were requested to acknowledge receipt of letter of January 27th, but failed to do so, and you were again advised relative to the matter on February 6th, and 9th. On February 12th, the Supervising Superintendent of Construction reported that you visited the station on that date, and on February 19th you advised him by wire that your representative was schedules for arrival at Roanoke on March 1st. On March 2nd, he reported that your representative had not arrived, and on March 5th you were advised that it was imperative that your representative arrive at the station without further delay. You failed to acknowledge receipt of letters of February 6th and 9th, and March 5th, and *you are hereby advised that in the event your representative is not at the station on or before Monday March 19th, action will be initiated to cancel your contract, in accordance with Article 9 of same.* This contemplated action is necessary in view of the fact that *you have consistently ignored instructions relative to proceeding with the portion of work which ties in with another contract.*

You were advised in letter of March 12th relative to submission of various materials for approval, as mentioned in letters of January 24th and 27th to you, and you are again advised that immediate action is necessary on your part to have all items approved at an early date in order to avoid delays to you and other contractors.

You are advised that *your close cooperation* with the Supervising Superintendent of Construction and the contractor for general construction *is required*, in order that all work will proceed in accordance with proper schedule to insure completion of the work on time

You are hereby instructed to acknowledge receipt of this letter, a copy of which is being sent to the Maryland Casualty Company, 705 Washington Building, Louisville, Kentucky, who furnished your performance bond, and you must submit a report showing whether you intend to proceed with the contract work.

Very truly yours
L. H. TRIPP
Director of Construction

cc to SC
cc to Surety

(27—13)

TELEGRAM

MONTGOMERY, ALABAMA MARCH 13, 1934
DIRECTOR, CONSTRUCTION SERVICE
VETERANS ADMINISTRATION
WASHINGTON, D. C.

MY LETTER EIGHTH SET FORTH URGENT NEED FOR DETAILS AND INFORMATION IN CONNECTION WITH STRUCTURAL STEEL BUILDING THIRTEEN ROANOKE VETERANS HOSPITAL STOP THIS DATA DEPENDENT ON EQUIPMENT TO BE FURNISHED BY REDMON HEATING COMPANY STOP WE HAVE POURED CONCRETE FOOTINGS BUILDING THIRTEEN AND CANNOT PROCEED FURTHER WITHOUT STRUCTURAL STEEL STOP OUR FABRICATOR ADVISES NO FURTHER PROG-

RESS POSSIBLE WITHOUT DATA REFERRED TO ABOVE STOP *THIS MEANS SERIOUS DELAY IN PROGRESS OUR CONSTRUCTION WORK AND THIS IS FORMAL REQUEST FOR EXTENSION OF TIME ACCOUNT THIS DELAY* EXTENT OF WHICH NOT YET KNOWN STOP PLEASE HELP US SECURE NECESSARY INFORMATION FROM REDMON IMMEDIATELY.

ALGERNON BLAIR

PAID:CHARGE
JTC:EG
100 WORDS
JOB
SUPERV. CONST.
X

(42—57)

Roanoke, Virginia
Redmon Heating Company
VAc-425
CONSTRUCTION SERVICE
S & M VETS. ADM 1934

HAB DEC/srb VETS ADM Room 764

TELEGRAM

MARCH 14, 1934

REDMON HEATING COMPANY
124 NORTH FOURTH STREET
LOUISVILLE, KENTUCKY

TELEGRAPHIC ADVICE FROM ROANOKE SHOWS BLAIR RUSHING FORM AND CONCRETE WORK STOP *YOU ARE RETARDING WORK BY FAILURE TO HAVE REPRESENTATIVE ON JOB AND NOT FURNISHING SHOP DRAWINGS FOR EQUIPMENT* IN BOILER HOUSE WHICH TIES IN WITH HIS

WORK STOP *URGENT THAT YOUR REPRESENTATIVE REPORT* AT STATION AT ONCE AND THAT NECESSARY SHOP DRAWINGS BE FORWARDED FOR APPROVAL STOP ACKNOWLEDGE BY WIRE AND ADVISE CONTEMPLATED ACTION.

SIGNED—
TRIPP CONSTRUCTION

CC TO SC
CC TO SURETY.

(42—63).

Roanoke, Virginia,
Algernon Blair
VAc-424
March 17, 1934
HAB DEC srb

Algernon Blair,
1209 First National Bank Building
Montgomery, Alabama

Sir:

Receipt is acknowledged of your letter of March 14th, relative to various delays encountered by you due to the failure of the Redmon Heating Company to furnish necessary information in connection with equipment which ties in with your contract work.

You are informed that various letters have been forwarded to Redmon Heating Company, requesting them to have their representative report at the station, and to submit samples and shop drawings to this office for approval. *Due to their lack of proper cooperation, they were advised under date of March 13th that in the event their representative was not at the station on or before Monday March 19th, action would be initiated to cancel their contract.* The Supervising Superintendent of Construction was instruct-

ed on the same date to advise this office by wire in the event his representative failed to arrive on that date.

On March 14th Redmon was informed by wire that you were rushing form and concrete work, and that he was retarding work by failure to have representative on the job, and non-furnishing of shop drawings and equipment in Boiler House. He was also informed that it was urgent that his representative report at the station at once, and that necessary shop drawings be forwarded for approval. He was instructed to acknowledge wire and advise contemplated action, and as he failed to take such action, follow-up telegram was forwarded him on March 16th.

You are requested to keep this Office fully posted, relative to any and all delays encountered by you on account of the failure of mechanical contractor to properly cooperate with you, and these reports should be transmitted through the Supervising Superintendent of Construction.

Very truly yours,
L. H. TRIPP
Director of Construction

cc to SC

(42—64)

WESTERN UNION

RU A 36 18 COLLECT GOVT ROAMOKE VIR 19 1001A
1934 MAR 19 AM 10 06
DIRECTOR OF CONSTRUCTION VETERANS
ADMINISTRATION WASH DC
YOU ARE ADVISED THAT JAMES T WHITE REPRESENTATIVE REDMON HEATING COMPANY REPORTED TO THIS STATION THIS DATE.
FELTHAM CONSTRUCTION

(42—80)

Roanoke, Virginia
Redmon Heating Company
VAc-425
April 2, 1934

Redmon Heating Company
124 North Fourth Street,
Louisville, Kentucky

Sirs:

Under date of March 29th, Algernon Blair forwarded drawings pertaining to revisions in the steel work around the platform in the Boiler House and stated that certain changes were required in connection with the location of the coal elevator, and you are advised that further action in connection with these drawings will be held in abeyance pending receipt of your shop drawings, covering the coal and ash handling equipment.

Your attention has previously been invited to the fact that the shop drawings must be submitted, and *urgent action on your part is necessary in order to avoid delay in connection with the contract for general construction.*

For the Director
J. ERNEST PRICE,
Chief, Administration Division
Construction Service

cc to SC

(27—29)

MONTGOMERY ALA
APRIL 21, 1934

CHIEF CONSTRUCTION DIVISION
VETERANS ADMINISTRATION
WASHINGTON D C

PLEASE URGE CONTRACTOR MECHANICAL EQUIPMENT ROANOKE TO IMMEDIATELY PUT ON ADDITIONAL ELECTRICIANS BECAUSE OUR PROGRESS SCHEDULE FOR NEXT WEEK CALLS FOR UNUSUAL AMOUNT OF CONCRETE POURING DEPENDENT UPON HIS KEEPING AHEAD OF US

ALGERNON BLAIR

CHARGE DL

(42—104)

May 1, 1934
HA JEP:s

Mr. P. M. Felham
Supervising Superintendent of Construction
Veterans' Administration Facility
Roanoke, Va.

Dear Sir:

Receipt is acknowledged of your letter of April 24, 1934 relative to telegram sent the Redmon Heating Company regarding immediate action to provide additional employees in connection with installation of mechanical equipment, and your comments in regard thereto have been noted.

In this connection it may be well to state that the time of sending wire in question *your report of April* 23, 1934 *indicated the Blair force at six hundred and forty one, and the Redmon force at thirteen, and these figures show that unless Redmon force was increased he would soon be delaying progress on the project.*

For the Director
J. ERNEST PRICE,
Chief, Administrative Division
Construction Service

(27—33 and 34)

P. O. Box 551
Salem, Virginia
May 2, 1934

Captain P. M. Feltham
Supvg. Supt. of Construction
Veterans Administration Facility
Roanoke, Virginia
Sir:

Reference is made to my anticipated schedule for pouring concrete, beginning April 30th up through May 5th, and particularly to the unnecessary delays on account of work in connection with the mechanical contract.

On May 1st, my schedule called for pouring of roof slab on Building No. 15 beginning in the morning. This was delayed until noon on that day on account of conduits.

This schedule calls for the walls of Building No. 14 to be poured beginning on the morning of May 2nd. While the interior of these walls have been in place some three weeks and the slab form in place the same length of time, with the steel in the exterior wall in place several days, there were a number of wood bars delivered to me after quitting time on May 1st to be located in the lower section of this wall below grade. On the morning of the 2nd after 8 o'clock there were a number of sleeves delivered to me to be installed through these walls for the mechanical contractor.

I request that these sleeves be furnished before or during the time of the building of the exterior half of the outside walls.

We would also call your attention to my schedule for pouring the ground floor of Building No. 16, which is called for on this schedule to begin Thursday, May 3rd. After 4 o'clock on May 2nd Mr. Johnson informed me that there was conduit to install in this floor that would take some

three hours, and that although we were working a double shift in order to make the progress desired by the Department, Redmon could not have anyone after 4 o'clock as it would require double pay after that time.

I respectfully request your cooperation in coordinating the mechanical equipment with mine.

I would also call your attention to my schedule for the pouring of first floor of Building No. 2 and walls of Building No. 19. The reinforcing steel was finished on the west half of Building No. 2 on the morning of May 1st and was completed on the entire floor at noon, May 2nd.

I urge that the mechanical people rush their part of the work in order that my schedule might not be delayed.

Respectfully,
ALGERNON BLAIR
By:

CWR:rsb
CC:Montgomery Office
CC:Redmon Plumbing and Heating Co.

(27—36)

P. O. Box 551
Salem, Va.
May 31, 1934

Captain P. M. Feltham,
Supvg. Supt. of Construction
Veterans Administration
Roanoke, Va.

Attention Mr. Thos. G. Dodd

Sir:

Reference to my contract for construction of Veterans Facility at Roanoke, Va. and particularly to my proposed schedule for pouring concrete from May 23 thru May 30, 1934.

This schedule called for pouring second floor of Building No. 1 on May 29, but due to mechanical work not being in place this had to be delayed. This floor will be poured, beginning the morning of June 1.

This schedule also called for first floor slab of Building No. 4 to be poured on Wednesday, May 30, but upon request from Mr. White we delayed the placing of the steel in this building pending installation of conduit. There was no mechanical man here on May 30, therefore, this slab is still being delayed.

It is necessary that we have either the first floor slab of Building No. 4 or the east end of Building No. 2 ready for concrete at 8:00 o'clock on June 2. I have just discussed this matter with the electrician who is working on Building No. 2 and he stated that it will take him thru Monday to complete this slab. There is only one man working on this slab and there seems to be no plumber or steamfitter employed on this slab at this time.

Mr. Berryman, who is erecting forms for walls and ground floor of Building No. 5, tells me that he has tried for three days to get the sleeves and location of same installed in walls of Building No. 5 and as yet he has been unable to obtain same.

Please expedite the mechanical work on Building No. 4 and Building No. 2 in order that I might not be delayed further.

Respectfully
ALGERNON BLAIR
By:

CWR-MD
CC-Montgomery Office

(27—39)

P. O. Box 551
Salem, Va.
June 6, 1934

Chief, Construction Service,
Veterans Administration,
Arlington Building,
Washington, D. C.

Sir:

Reference is made to my contract for construction of U. S. Veterans Facility at Roanoke, Virginia, and in particular to the matter of final information in connection with Building No. 13, Boiler House, in this group of buildings.

As you realize, *we are still lacking information to complete the structural steel work and concrete framing* in connection with this building, and the delay has now become serious and the expense considerable.

On May 18, at a conference in Washington, we were assured that this information would be in our hands without further delay, but up to the present time we have not received the data requested.

It will be necessary for me to make application for an extension in time in connection with this building—This extension in time to be determined when final information is received enabling us to proceed with the work.

Respectfully,
ALGERNON BLAIR
By:

NGA-MD
CC-Capt. P. M. Feltham,
Supvg. Supt. of Construction
Veterans Administration
Roanoke, Va.
cc Montgomery Office

(27—40 and 41)

June 12, 1934

Chief, Administration Division
Construction Service
U. S. Veterans Administration
Washington, D. C.

Sir:

Reference is made to my contract for construction of a Group of Buildings for Veterans Administration Facility at Roanoke, Va.

This is to confirm telephone conversation had with Col. Talbott this morning in which I emphasized the need for greater speed in connection with the installation of mechanical equipment.

I pointed out the fact that on Building No. 7 we have today started the roof framing, and we expect to start immediately the face brick work above the first floor level, and on the 15th instant it is in our schedule to start the interior partitions. We propose to start plastering in this building not later than Monday, July 2nd.

The above schedule of progress for Building No. 7 cannot be carried out, because the roughing in for plumbing, heating and electrical work is not sufficiently advanced to permit our going along with the partitions. So far, the mechanical work done on this building is only that roughing in which goes under the basement floor, and the placing of sleeves and conduits in the structural slabs above. No vertical runs have been installed.

Building No. 1 is only a week behind No. 7, and what I have said above about No. 7 will apply to No. 1, as of next Monday, June 18th.

Then, Building No. 2 on Monday, July 2nd, will be just as far along as No. 7 is today. In fact, at intervals of eight or ten days for the next eight weeks we shall add some

one building to the list of those ready for the installation of interior partitions and then the lathing and plastering, dependent upon completion of roughing in of mechanical work.

There is nothing in what has been accomplished up to this time in the way of installation of mechanical equipment to justify the hope that our work can go on as it should and as you require it. I am venturing to raise the question as to the need materials for the roughing in, as the visible supply would seem entirely inadequate.

This is a most distressing situation, and means confusion and expense for us, because of our having built up an organization which can accomplish the speed you have urged of us.

I gave you this information by telephone this morning, because it seemed to me of such importance that you should take immediate action.

Yours very truly,

AB:ML
CC:Job
CC: Supvg. Supt. of Constr.

(27—43)

P. O. Box 551
Salem, Va.
June 12, 1934

Captain P. M. Feltham
Supvg. Supt. of Construction
Veterans Administration
Roanoke, Va.

Sir:

Reference to my contract for construction of Veterans Facility at Roanoke, Va. and particularly to *interior partitions* in the above buildings.

It is our plan to start setting interior tile partitions in Building No. 7 on June 18, completing same approximately July 1.

In spite of the fact that all of the forms, including Pent House forms, have been completely cleaned up on this building for over a week there still has been *no plumbing or electrical work installed that will permit of the construction of the partitions in a logical manner.*

Also on Buildings Nos. 15 and 16 the forms have been wrecked for some time, and in the case of Building No. 15 the outside walls have been in place for about a week and *none of the plumbing risers or electrical work have been installed that will permit the construction of these partitions.*

In the case of Building No. 1, the forms supporting first and second floors have been removed and there is nothing to prevent the mechanical trades proceeding with their work in this building.

From past experiences I am certain that the Mechanical Contractor cannot possibly install the work he has to put in to prevent serious delay in the progress of my work, and I appeal to you to take such action as will insure this work being done promptly and with such force of men as will enable us to proceed with our masonry.

Respectfully,

ALGERNON BLAIR

By: (Signed) NEIL G. ANDREW

NGA-MD
CC-Montgomery Office

(42—119)

WESTERN UNION TELEGRAM

RUA57 21 GOVT COLLECT—ROANOKE VIR 11 1025A
6/13/34
DIRECTOR OF CONSTRUCTION VETERANS ADMINISTRATION—WASH DC
RECOMMEND SOME ACTION REFERENCE REDMONS DELIVERY OF MATERIAL STOP *WORK WILL BE CONSIDERABLY DELAYED* UNLESS DELIVERIES ARE MADE AT ONCE
(SIGNED) FELTHAM

(42—120)

June 13, 1934

Supvg. Supt. of Construction
Veterans Administration Facility
Roanoke, Virginia

HAB DEC/srb

Sir:

Receipt is acknowledged of your telegram of June 11th, in which you suggested contracting above mentioned contractor relative to delivery of materials, and *it is noted that the work will be considerably delayed*, unless deliveries are made at once.

Contractor was contacted on June 9th, and advised that the general progress of the work for general construction, with special reference to Boiler House No. 13, was being *greatly retarded by his failure to submit shop drawings* and adequate data in connection with equipment for check and approval, and he will be further contacted on or about June 20th if he fails to take proper action in connection with instructions contained in letter of June 9th.

You are requested to forward a detailed report covering

the various items which are causing delay at this time, in order that the contractor may be further contacted with definite instructions as to particular items.

For the Director,
H. W. GARDNER,
Acting Chief, Administrative
Division, Construction Service

(27—46)

Roanoke, Virginia
Algernon Blair
VAc 424

VETERANS ADMINISTRATION FACILITY
Roanoke, Virginia, June 13, 1934

Algernon Blair, Contractor,
Box 551
Salem, Virginia

Sir:

Acknowledgement is made of your communication dated Salem, Virginia, June 12, 1934, setting forth certain complaints regarding the progress made by the contractor for *mechanical work* at Veterans Administration Facility, Roanoke, Virginia.

For your information you are advised that this *office is endeavoring in every possibile way to force the above mentioned contractor to rush his portion of the work.*

Yours very truly
Signed—P. M. FELTHAM
Supvg. Supt. of Construction

PMF/mi
CC-Montgomery Office

(42—121)

CONSTRUCTION SERVICE
S & E VETS ADM 1934
June 13, 1934

HAB DEC/srb VETS ADM Room 764

TELEGRAM

REDMON HEATING COMPANY
124 NORTH FOURTH STREET
LOUISVILLE KENTUCKY

GOVERNMENT REPRESENTATIVE AT ROANOKE REPORTED BY WIRE THIRTEENTH AS FOLLOWS QUOTE INFORMED BY REDMON SUPT. THAT *FUNDS OF THAT COMPANY ARE TIED UP IN LITIGATION* STOP *CONTRACTOR UNABLE TO HAVE MATERIAL RELEASED OR TAKE CARE OF PAYROLL* ADVISE THIS OFFICE WHAT ACTION TO TAKE UNQUOTE ADVISE THIS OFFICE BY WIRE RELATIVE YOUR PROPOSED ACTION IN CONNECTION WITH CONTRACT AT ROANOKE

(SIGNED) TALBOTT CONSTRUCTION

CC to SC

(42—126)

WESTERN UNION TELEGRAM
JB 562 40 NL-LOUISVILLE KY 13

1934 JUN 13 PM 9 49

VETERANS ADMINISTRATION
CONSTRUCTION SERVICE
ARLINGTON BLDG
WASHINGTON, D. C.

RETEL ROANOKE CONTRACT MISUNDERSTAND-

ING CAUSED BY MEN DEMANDING PAYMENT OF WAGES AT END OF THIRTY HOUR WEEK WHEN FUNDS WERE NOT ON DEPOSIT AT ROANOKE STOP MATTER CLEARED UP STOP WE ARE PROCEEDING ON WORK WITH ADEQUATE MEN AND MATERIALS

(SIGNED) REDMON HEATING COMPANY

(42—128 and 129)

Roanoke, Virginia
Redmon Heating Co.
VAc-425

VETERANS ADMINISTRATION FACILITY
Roanoke, Virginia, June 14, 1934

Director of Construction
Veterans Administration
Washington, D. C.

Sir:

Reference is made to your letter of June 13, 1934, relative to telegram from this office under date of June 11th, regarding delay in the delivery of materials required under the above noted contract. In reply to the last paragraph thereof requesting a report covering the various items which are causing delay at this time, in order that the contractor may be further advised as to definite instructions as to particular items, you are informed as follows:—

(1) Pipe and Fittings for Plumbing Work other than Soil Pipe.

The only kind of pipe and fittings for plumbing work, with the exception of floor drains and wall hydrants, which has been received up to this time is soil pipe. Building No. 7 and the Utility Group are now in such shape that rapid progress could be made if steel pipe for installation of stacks and vents and if brass tubing for the water system were

available. From the latest information, *no release of this material has as yet been made.*

(2) Pipe for Outside Sewer System.

In agreement with Central Office letter of May 6th, the contractor was notified that he should proceed with the construction of the outfall sewer in accordance with contract plans, and that decision as to proper allowance for extra involved would be a matter of later adjustment. As yet *no work has been initiated* on the outfall sewer and *no material thereof received; nor has any pipe for the outside sewer system in general.* The contractor's representative states that it is his understanding that release of pipe and material for outside sewer is being delayed pending decision as to whether terra cotta pipe or locally manufactured concrete pipe will be used for the storm sewers in agreement with Central Office letters of April 28th and May 17th to the contractor relating to this matter.

(3) Water Pipe.

No pipe for the outside water system has as yet been received. Certain of the water lines in front of the Main Building cross under roads for considerable lengths or are immediately back of the curb line of such road work. The record indicates that Central Office has requested the general contractor to complete a portion of the road work in front of the Main Building prior to September 1st. The completion of such road work will be *seriously delayed or retarded* unless material for the water lines which must be installed in conjunction therewith is received.

(4) Pipe and Fittings for Heating Work.

The heating lines in the basement of Buildings No. 1, 2, and 7 are to be run exposed below the ceiling and the returns are carried along the walls. Until such lines are installed the *construction of partition work* in the basements *will be delayed. No pipe or fittings for such heating work have as yet been received.*

The above mentioned items comprise the principal items which appear at this time to be likely to retard progress of general construction.

In addition to the above, there is of course the matter of equipment approval which is *interfering with the completion of Boiler House* Building No. 13.

In line with the foregoing, any action which Central Office may be able to make to effect immediate release and prompt delivery of pipe and fittings required for all heating and plumbing work above basement floors and all piping material for exterior sewer and water lines *will assist in avoiding future delays which it is apparent will occur* unless such material is received in the immediate future.

Respectfully,
(Signed) P. M. FELTHAM
P. M. Feltham,
Supvg. Supt. of Construction

WRJ/mi/rw

(42—135)

Roanoke, Virginia
Algernon Blair
VAc-424

CONSTRUCTION SERVICE
S & E VETS ADM 1934

HAB DEC/srb VETS ADM Room 764

TELEGRAM

JUNE 18, 1934

ALGERNON BLAIR
1209 FIRST NATIONAL BANK BUILDING
MONTGOMERY ALABAMA

RETEL JUNE SEVENTEENTH REPORTING *LACK OF PROGRESS OF MECHANICAL TRADES* STOP IM-

MEDIATE CONFERENCE WITH MECHANICAL CONTRACTOR HAS BEEN CALLED WITH VIEW OF TAKING ACTION TO PROMPTLY CORRECT THE UNSATISFACTORY CONDITION

(SIGNED) TRIPP CONSTRUCTION

CC TO SC

(42—140)

WESTERN UNION TELEGRAM

RUA64 21 GOVT COLLECT—ROANOKE VIR 19 1149A

JUNE 19 1934

TRIPP CONSTRUCTION
VETERANS ADMINISTRATION WASH DC—

RETEL EIGHTEENTH REDMON WORKING THIS DATE ONE STEAM FITTER THREE PLUMBERS FOUR ELECTRICIANS TWO HELPERS FOUR LABORERS *NO MATERIAL DELIVERED*—

(SIGNED) FELTHAM

(27—48)

June 19, 34

Colonel L. H. Tripp
Chief, Construction Service
Veterans Administration
Washington, D. C.

Dear Colonel Tripp:

I am encouraged by the telegram you sent me yesterday advising of your intention to have a conference immediately with the mechanical contractor with regard to lack of speed on the Roanoke buildings.

In the last five or six weeks we have built up a very large organization and we have most enthusiastically gotten the support of the manufacturers of the various materials

needed and have been pressing them for deliveries. As an example of this we have had one of the young men from this office spend several days in Chicago with the people who are manufacturing metal trim, part of this material being needed ahead of the plastering. Also, we have had direct contact with Knapp Brothers about the meral door frames and, as a result of it, these materials are on the way.

We have had one of our engineers camping on the trail of Campbell Metal Window Corporation for three weeks and now they are making deliveries to us with remarkable speed.

We have the manufacturers of the lathing and furring materials hurrying their products and we are all set to start the furring and lathing as quickly as the partitions can be built and the partitions are dependent upon the roughing-in for the plumbing fixtures.

Building No. 7 is standing there with the forms removed waiting for the plumbers to do their work. *They should have been on that job four weeks ago* and it simply means that we are going to lose four weeks in making any progress there. Building No. 1 will be in the same shape as No. 7 within a day or two, and other buildings will follow shortly.

It is a tragedy that we should have been stopped in this way and it is not reasonable to suppose that the contractor for the mechanical equipment has the capacity or the willingness to get the needed men and materials so that our work can go on.

It is not simply a case of getting mechanics and paying their wages; the real problem is in getting the needed materials there. Think of it, *the details of the mechanical work for the Boiler House are probably no further advanced than they were ninety days ago* and yet we are

talking about having this central heating plant completed in November!

Respectfully,

AB:EG
CC: Superv. Supt. of Const.
CC:Job

(42—146)

CONSTRUCTION SERVICE
JUNE 21 1934

TELEGRAM

REDMON HEATING COMPANY
124 NORTH FOURTH STREET
LOUISVILLE KENTUCKY

RETEL NINETEENTH STOP THE *SERIOUSNESS OF THE SITUATION REGARDING LACK OF PROGRESS ON YOUR CONTRACT* AT ROANOKE MAKES IT NECESSARY TO ADVISE YOU THAT UNLESS SATISFACTORY ACTION IS INITIATED BY YOU BEFORE CLOSING OF BUSINESS JUNE TWENTY SIXTH COMMA WHICH WILL PROVIDE SATISFACTORY PROGRESS COMMA IT WILL BE NECESSARY TO *TERMINATE YOUR RIGHT TO PROCEED* WITH THE WORK

TRIPP CONSTRUCTION

(42—149)

WESTERN UNION

ROANOKE VIR
JUN 23 AM 11 00

TRIPP CONSTRUCTION—
VETERANS ADMINISTRATION WASH DC

REFERENCE REDMONS CONTRACT ROANOKE STOP EMPLOYED THIS DATE FOUR ELECTRICIANS FOUR PLUMBERS ONE STEAM FITTER TWO HELPERS FIVE LABORERS STOP REDMONS REPRESENTATIVE UNABLE TO MEET PAYROLL

FELTHAM.

(42—152)

WESTERN UNION

LOUISVILLE KY JUN 25 PM 4 20

VETS ADMN
CONSTRUCTION SERVICE ARLINGTON BLDG
WASH DC

REFERENCE PLUMBING HEATING ELECTRICAL WORK ROANOKE VIRGINIA *IMPOSSIBLE FOR US TO COMPLETE CONTRACT*

REDMON HEATING CO.

(42—154)

RADIOGRAM

CENTRAL OFFICE
CONSTRUCTION SERVICE
S & E VA 1934
JUNE 26, 1934

E J REDMON
REDMON HEATING COMPANY
124 NORTH 4TH STREET
LOUISVILLE KENTUCKY

REFERENCE TELEGRAM TO YOU JUNE TWENTY FIRST AND YOUR REPLY TWENTY FIFTH THAT

IT IS IMPOSSIBLE FOR YOU TO COMPLETE YOUR CONTRACT DATED DECEMBER SIXTH NINETEEN HUNDRED THIRTY THREE FOR PLUMBING HEATING ELECTRICAL WORK VETERANS ADMINISTRATION FACILITY ROANOKE VIRGINIA STOP YOUR RIGHT TO PROCEED WITH THIS WORK IS HEREBY TERMINATED STOP THIS IS DONE IN ACCORDANCE WITH ARTICLE NINE OF THE CONTRACT STOP LETTER FOLLOWS

TRIPP CONSTRUCTION

(42—157)

POSTAL TELEGRAPH

MONTGOMERY ALA
1934 JUN 29 1934

CONSTRUCTION SERVICE
VETERANS ADMINISTRATION
REFERENCE FAILURE REDMON HEATING COMPANY ROANOKE VETERANS HOSPITAL STOP WE ARE OF COURSE ANXIOUS TO HELP IN EVERY POSSIBLE WAY TO GET MECHANICAL WORK STARTED AGAIN AND ASK THAT YOU COMMAND US IF WE CAN BE OF ANY POSSIBLE ASSISTANCE IN HANDLING DETAILS TO THIS END

ALGERNON BLAIR

(42—171)

Roanoke, Virginia
Algernon Blair
VAc-424
June 29, 1934

Algernon Blair
1209 First National Bank
Montgomery, Alabama

Sir:

Your offer of cooperation and assistance in aiding the resumption of mechanical work at Roanoke, as expressed in your telegram of June 27th, is appreciated.

The conference of June 28th with a representative of the Maryland Casualty Company, surety for the Redmon Heating Company, indicated that the surety will promptly proceed with the mechanical work, and it is hoped the least possible inconvenience will be experienced by you due to this unavoidable interruption.

Very truly yours,
L. H. TRIPP
Director of Construction

cc to SC

(42—181)

Construction Service
S & E 1935
HA JAF: lw Room 762
July 14, 1934

TELEGRAM

FELTHAM
SUPERVISING SUPT OF CONSTRUCTION
VETERANS ADMINISTRATION FACILITY
ROANOKE VIRGINIA

CUSHWA MARYLAND CASUALTY COMPANY REPRESENTATIVE NOTIFIED THIS OFFICE THIS MORNING HIS COMPANY HAD SIGNED CONTRACT WITH THE VIRGINIA ENGINEERING COMPANY TO COMPLETE THE REDMON CONTRACT (STOP) PERMIT VIRGINIA ENGINEERING COMPANY TO TAKE OVER THE REDMON CONTRACT IN BEHALF

OF THE MARYLAND CASUALTY COMPANY AT SUCH TIME AS THEY DESIRE
TRIPP CONSTRUCTION

(27—75)

VETERANS ADMINISTRATION
WASHINGTON

October 5, 1934

Mr. Algernon Blair,
Contractor,
Montgomery, Alabama.

My dear Mr. Blair:

I visited Roanoke yesterday and was much pleased at the splendid progress which is being made not only on the contract work but in connection with the clearing of grounds, etc. which we are accomplishing through the utilization of C. C. C. labor.

The progress which has been made on the roads is really splendid and I was very glad to see the brickwork so far advanced on Building No. 6. The scaffolding on the main building had begun to come down yesterday so that I am sure the place will offer as presentable appearance as any construction job in its present stage of completion could possibly offer. We certainly hope to secure that result.

The grading work around the fronts of the buildings and the elimination of odd lots of material and of such items of plant equipment as have served their purpose are matters which I am sure you have in mind and which materially will help in making the job look as tidy and ship shape as possible. I saw Mr. Roberts and Mr. Lacey and am full appreciative of the cooperation of your organization in connection with this entire matter.

Incidentally and in view of the fact that you are slightly ahead of normal progress based on the original completion

date, *I am harboring the pleasant hope that the job may if anything finish ahead of time. This indeed would be a source of gratification to all of us in view of the difficulties which have been encountered along the way.*

With best regards, I remain

Yours very truly,

(Signed) L. H. TRIPP

L. H. Tripp,
Director of Construction

CC to Mr. Roberts, Roanoke, Va.